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Supreme Court of the United States

OCTOBER TERM, 1966

No. 66

KALMAN J. BERENYI, PETITIONER,

vs.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 22, 1966
CERTIORARI GRANTED APRIL 18, 1966

SUPREME COURT OF THE UNITED STATES

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No. 66

KALMAN J. BERENYI, PETITIONER,

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 6531

KALMAN J. BERENYI, Petitioner-Appellant,

against

DISTRICT DIRECTOR, Immigration and Naturalization Service, Respondent-Appellee.

Record Appendices

[fol. 1]

NATURALIZATION

UNITED STATES DISTRICT COURT

NATURALIZATION 669

DOCKET ENTRIES

Petition of Kalman J. Berenyi (No. 1500-P-351469).

For Petitioner

Charles Spar, Spar & Burroughs, 160 Broadway, N. Y., N. Y.

Leon B. Sauetsky, same address as above.

Basis of Action: Appeal from order denying petition for naturalization.

[fol. 2]

DATE	PROCEEDINGS
1965	
Apr. 29	Notice of Appeal filed by petitioner from order denying petition for naturalization entered March 29, 1965. Copies N/A to U. S. Atty., and Dist. Director of Immigration and Naturalization.
29	Bond on Appeal—Costs, filed in the amount of $250. Charles Spar, as Surety.

[fol. 3]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 1500-P-351468
No. 1500-P-351469

Julian, D. J.

IN THE MATTER OF:
PETITION FOR NATURALIZATION
BY MAGDALENA R. BERENYI AND
KALMAN J. BERENYI

Transcript of Testimony

APPEARANCES:

JOSEPH B. SULLIVAN, ESQUIRE,
General Attorney for Nationality, for the Government.

CHARLES SPAR, ESQUIRE, and LEON B. SANETSKY, ESQUIRE,
Attorneys for the Petitioners.

Courtroom No. 5
Federal Building
Boston, Massachusetts

Monday, November 30, 1964

The Clerk. Petitions No. 351468 and 351469, in the matter of Kalman Berenyi and Magdalena Berenyi.

Mr. Spar. The petitioners, your Honor, are ready for the hearing today.

The Court. Is the Government ready?

Mr. Sullivan. Government ready, your Honor.

The Court. You may proceed.

[fol. 4] Mr. Spar. May it please your Honor, I ask the Court's indulgence for one moment. For the Record may I introduce to this Court, sir, my partner, Leon B. Sanetsky, a member of the bar of the State of New York and duly admitted to practice in the United States District Courts for the Southern and Eastern Districts of New York, as well as in the Court of Appeals for the Second Circuit. I would ask the Court's permission to admit him for the purposes of assisting me at this trial today. He is a member of my law firm.

The Court. Is there any objection?

Mr. Sullivan. Beg your pardon.

The Court. Is there any objection?

Mr. Sullivan. No objection, your Honor.

The Court. The motion is granted.

Mr. Spar. Thank you, sir.

The Court. Mr. Sullivan, you may proceed.

Opening Statement of Mr. Sullivan

Mr. Sullivan. Thank you, your Honor. Your Honor, my name is Joseph B. Sullivan. I am a General Attorney and duly designated Naturalization Examiner for the United States Department of Justice, Immigration and Naturalization Service.

With reference to petition for naturalization No. 351468, in the case of Magdalena Berenyi, and petition No. 351469, in the case of Kalman J. Berenyi, the petitioners have been examined under the Immigration and Naturalization laws and have been found not qualified—I repeat—not qualified for admission to United States Citizenship. The Government's motion is, your Honor, that both cases be denied.

The Government intends to show that the male petitioner, Kalman J. Berenyi, was a self-admitted member of the Communist Party and that he attended Communist Party meetings; that he did teach and advocate Communist ideology; that he has failed to establish good moral character

as required by the law by failing to testify frankly and [fol. 5] honestly and truthfully in connection with his petition for naturalization; that he has given false testimony for the purposes of obtaining a benefit under the Immigration and Nationality Laws.

With regard to the female petitioner, your Honor, the Government intends to show that she has failed to establish good moral character in that she has failed to testify honestly, frankly and truthfully in connection with her petition for naturalization.

Your Honor, pursuant to Section 335(b) which is keyed to 8 USC 1446, the record of the preliminary examinations in the case of Kalman J. Berenyi and Magdalena Berenyi are introduced into evidence to be marked as Government exhibits.

The Court. Will you show them to Mr. Spar please? Mr. Spar, you represent both petitioners?

Mr. Spar. I do, sir.

Mr. Sullivan. I would like to, your Honor—Mr. Spar has already had access to these preliminary—

The Court. Well, he is entitled to see them before—

Mr. Sullivan. That is right. Excuse me, your Honor. In addition, your Honor, pursuant to Section 335(d), although not considered evidence, the recommendation and reasons therefor of the designated examiner are also submitted.

Mr. Spar. If your Honor please, before I have the opportunity of looking at the offered evidence here, may I make a preliminary statement as to the position of both petitioners for naturalization, just as Mr. Sullivan has made for the Government.

The Court. You mean you wish to have an opportunity of making an opening at this time?

Mr. Spar. A very short opening as Mr. Sullivan has.

The Court. In lieu of an opening hereafter?

Mr. Spar. Yes, sir.

The Court. You may do so.

[fol. 6] OPENING STATEMENT OF MR. SPAR

Mr. Spar. Thank you, sir. If your Honor pleases, I represent both petitioners for naturalization, husband and wife, members of the medical profession in the Commonwealth of Massachusetts.

They were married in Hungary on June 7th, 1952. I might state, sir, that the position of both petitioners—

The Court. Was that '52 or '62?

Mr. Spar. 1952 in Hungary. They are married some 14 and a half years. They have no children.

May I state, sir, that the Government's position has somewhat receded as far as the female petitioner is concerned. All during the investigation that was conducted by the Immigration and Naturalization—

The Court. I am only interested in the present position of the Government.

Mr. Spar. The position of both petitioners is as follows: that neither at any time, either directly or indirectly, have advocated the overthrow of the United States Government by force or violence. Neither at any time has been a member of the Communist Party. Neither at any time from the date of their birth up to and including the present time has ever admitted membership in the Communist Party of this country, of Hungary, or of any other country. Neither of these petitioners has ever advocated Communism in this country or in Hungary or in any other place.

As far as the male defendant, Dr. Kalman Berenyi, the male petitioner, Kalman J. Berenyi is concerned, we deny that he at any time self-admitted that he was a member of the Communist Party. We deny that the record so states, the record that the Immigration and Naturalization Service will submit to this Court, that he was a self-admitted member of the Communist Party. He has denied ever making that statement.

As far as Mrs. Berenyi is concerned, Dr. Magdalena Berenyi, she is not now being charged by the Immigration and Naturalization Service, as I see the record here, of ever

[fol. 7] having been a member of the Communist Party. There is no claim in her case. The only claim in her case is that she did not tell the Immigration and Naturalization Service that her husband was a member of the Communist Party, assuming that he was for the sake of discussion. They allege in their petition that he allegedly became a member of the Party in Hungary in 1945 or 1946 and the date is most important. There is no statement in the petition or any where else as to how he became a member, in what way he became a member, or what evidence of membership there was. But they are charging her here with knowledge of her husband's membership in the Party when she wasn't even his wife. They were married some seven years later, and there was no claim that they lived together as husband and wife during that time. There is no claim that they were anything else but acquaintances and they got married in 1952 while attending the same medical school in Budapest.

The charge against her is by inference that she should have known or did know about her fiance being a person of Communist ideology. As far as Dr. Magdalena Berenyi is concerned, she will testify and take the stand to the effect that neither she nor her husband, to her knowledge, has ever been a member of such Party or advocated any of the ideologies that are usual to that of a Communist; that they are both unalterably opposed to Communism and never at any time participated on a voluntary basis in Communist Party activities; and that while they were in medical school they were basically medical students; and that although they served in the medical corps of the Hungarian Army, they did so because that was the usual custom and they were required to join the army, to become officers in the army in the medical corps. That did not make them Communists; that they never joined and never would join such organization.

That, sir, is the position of both of the petitioners to this case.

The Court. Mr. Sullivan.

[fol. 8] Mr. Sullivan. Your Honor, although cross-examined previously by counsel for the petitioners, the Government witnesses are present in the courtroom. Petitioners through their counsel have elected to invoke the statutory right to examine the witnesses in the presence of the Court under oath. Government witnesses are present, your Honor, and with your permission I would like to call Dr. Pal Halasz to the stand.

The Court. Before you proceed with the witness, you did make an offer of certain documents in evidence. They are now being examined by Mr. Spar. Let's pursue that matter first.

Mr. Spar. Mr. Sullivan, sir, may I ask you something. If your Honor pleases, may I point out to your Honor—

The Court. Have you examined the documents?

Mr. Spar. Yes, sir. There is an objection.

The Court. How many documents have you examined?

Mr. Spar. I have in front of me, sir, a recommendation—

The Court. I think for the sake of keeping the Record clear, let us mark those documents for identification.

Mr. Spar. Sure.

Offers in Evidence

The Court. Now which one do you wish to mark as Exhibit 1 for identification, Mr. Sullivan, first? Which one? What are you offering now in evidence?

Mr. Sullivan. The record of the preliminary examination together with—

The Court. Is there only one record or are there two separate records?

Mr. Spar. I am referring now, sir, to the petitioner, Magdalena Berenyi, sir, under petition filed by her.

The Court. Well, let Mr. Sullivan present his case. Which document do you wish to have marked as Exhibit 1 for identification?

Mr. Sullivan. Your Honor, the record of the preliminary examination of Dr. Pal Halasz in which—

[fol. 9] The Court. Whose?

Mr. Sullivan. Counsel for the petitioner was present in Chicago. This is a record of the preliminary—

The Court. In reference to which petitioner are you now offering this?

Mr. Sullivan. This is with reference to Magdalena Berenyi.

The Court. That is the record of what?

Mr. Sullivan. Preliminary examination held in Chicago.

The Court. Well, there is only one preliminary examination, is there?

Mr. Sullivan, No, your Honor. There are one, two, three.

The Court. All relating to the same petitioner?

Mr. Sullivan. All relating to the same thing.

The Court. To the same petitioner?

Mr. Sullivan. That is right.

The Court. Do you wish to have those marked separately?

Mr. Sullivan. No. They are all marked Exhibit 1, your Honor. They run from 1-A, 1-B right down to 1-G.

The Court. How many are there?

Mr. Sullivan. 1-A to 1-G.

The Court. Let those be marked respectively—which one do you wish to have marked Exhibit 1-A for identification? What date?

Mr. Spar. If your Honor pleases, may I interrupt your Honor. May I at this time for the sake of saving the Court's time suggest to your Honor that your Honor take into evidence for what it is worth the entire petition filed of Magdalena Berenyi as Exhibit 1 and offered in evidence.

The Court. That is the suggestion that you make to the Government, but the Government is presenting its case and I will take their offer and you may have your opportunity later.

What are you offering? Did you hear the suggestion made by Mr. Spar?

[fol. 10] Mr. Sullivan. I am sorry.

The Court. Well, it is a good thing to listen when counsel are talking; otherwise, we are just going to waste time. Repeat your suggestion.

Mr. Spar. If your Honor pleases, may I suggest to save the Court's time that the entire record of the petition and the exhibits relating to examinations of witnesses and of Dr. Berenyi be offered as one single exhibit and I will not object to it going into evidence. The entire file.

Mr. Sullivan. Your Honor, this is in the case of Kalman J. Berenyi.

The Court. What is it though that you are offering?

Mr. Sullivan. It is the record of the Government's preliminary examination plus exhibits 1-A through G.

The Court. Is there any objection?

Mr. Spar. None at all. It is the entire record, your Honor. No objections.

The Court. Look, I am taking into evidence what is offered, and I want to know specifically what it is that is being offered and what it is that you are not objecting to. I don't know what you mean by "the entire record." The word "entire" is—don't interrupt me when I am talking please. I think we are wasting time at the very beginning. Do you object to what the Government is offering?

Mr. Spar. No, sir.

The Court. All right. Now make your offer.

Mr. Sullivan. Your Honor, Exhibit 1 in the Government's case is a record of the preliminary examination of Kalman J. Berenyi with the following exhibits, 1-A through G.

The Court. Well, 1-A to 1-G constitutes the record of preliminary examination.

Mr. Sullivan. Does your Honor want me to—

The Court. Listen to me when I am talking to you please. Does 1-A to 1-G represent the entire record of the preliminary examination relating to Kalman?

Mr. Sullivan. That is right.

[fol. 11] The Court. All right. Admitted in evidence and they may be so marked, there being no objection. Have those been marked?

The Clerk. Yes, Judge.

Mr. Sullivan. With your permission, your Honor, the Government would like to call Dr. Pal Halasz to the stand.

The Court. Are you going to offer anything with reference to Magdalena's petition at this time?

Mr. Sullivan. Excuse me. I thought that was already put in before Kalman John Berenyi.

The Court. I thought your offer was, as I understand it, Exhibits 1-A through 1-G which constituted the record of preliminary examination in the case of Kalman.

Mr. Sullivan. Also introduced, your Honor, three transcripts of the preliminary examination in the case of Magdalena Berenyi plus Exhibits 1-A through 1-G in the case of Magdalena Berenyi.

The Court. Just a moment. I have ordered the record of the preliminary examination relating to the Kalman case to be marked Exhibit 1-A through 1-G. Does that cover them all?

Mr. Sullivan. Well, there are three transcripts in Exhibit 1, your Honor.

The Court. Well, I am not doing it that way. I am not calling it Exhibit 1 and then 1-A, 1-B. I am starting with the number 1 Exhibit and calling it 1-A and then every succeeding exhibit, 1-A, -B.

Mr. Sullivan. The three transcripts will be considered 1-A—

The Court. You spoke about Kalman first. You spoke of Kalman first. What have you marked, Mr. Skarmeas, with reference to the petitioner Kalman.

(Discussion off the Record.)

The Court. We will call the record of preliminary examination relating to Magdalena Exhibits 2-A through whatever number they go through.

[fol. 12] The Clerk. Government Exhibit 1, Kalman John Berenyi, it is 1-A through the letter H.

The Court. Through what?

The Clerk. Through H.

The Court. Through H, yes. One more than Mr. Sullivan indicated.

The Clerk. Yes. They both run the same way. Kalman John Berenyi are Exhibits 1-A through 1-H. Magdalena Berenyi is Government 2-A through 2-H.

The Court. How do you account for the discrepancy between your enumeration, Mr. Sullivan, of 1-A through 1-G and 2-A through 2-G, whereas the Clerk finds an additional exhibit marked H.

Mr. Sullivan. H?

The Court. That is right.

Mr. Sullivan. I am sorry, your Honor. The picture was put in there for what it was worth.

The Court. That is H. Is there a picture in each instance?

The Clerk. Yes.

The Court. Very well. Now, Mr. Spar, have you examined Exhibits 1-A through 1-H and 2-A through 2-H? Have you?

Mr. Spar. Yes, sir.

The Court. Do you consent to their being received in evidence?

Mr. Spar. Yes, sir.

The Court. Very well. You may proceed.

(Report of continued hearing (Halasz) dated September 17, 1964, marked Exhibit 1-A.)

(Preliminary examination (Kury) held August 21, 1964 marked Exhibit 1-B.)

(Preliminary examination (Kalman J. Berenyi) held July 30, 1963, marked Exhibit 1-C.)

(Kalman J. Berenyi application to file petition for naturalization marked Exhibit 1-D.)

[fol. 13] (Six-page statement (Kalman J. Berenyi) dated May 22, 1962, marked Exhibit 1-E.)

(Record of sworn statement of Kury, dated April 14, 1959, marked Exhibit 1-F.)

(Record of sworn statement of Halasz, dated July 9, 1959, marked Exhibit 1-G.)

(Piece of paper with attached photograph marked Exhibit 1-H.)

(Report of continued hearing (Halasz) dated September 17, 1964, marked Exhibit 2-A.)

(Report of preliminary examination (Kury) dated August 21, 1964, marked Exhibit 2-B.)

(Record of preliminary examination of Magdalena Berenyi, dated July 30, 1963, marked Exhibit 2-C.)

(Application to file petition for naturalization of Magdalena Berenyi, marked Exhibit 2-D.)

(Four-page statement dated May 22, 1962, re Magdalena Berenyi, marked Exhibit 2-E.)

(Record of sworn statement re Gyorgy Kury marked Exhibit 2-F.)

(Record of sworn statement of Pal Halasz marked Exhibit 2-G.)

(Piece of paper with attached photograph marked Exhibit 2-H.)

PAL HALASZ, sworn.

Direct examination.

By Mr. Sullivan:

Q. Will you please state your full name?
A. Dr. Pal Halasz.

Q. Where do you reside?

A. 300 East Embert Place, Peoria, Illinois.

Q. What is your occupation or profession?

A. I am a physician and surgeon.

Q. Do you specialize in any particular field?

A. No.

[fol. 14] Q. Where did you obtain your medical education, doctor?

A. Budapest, Hungary.

Q. When?

A. 1949 to 1955.

Q. Doctor, present in the courtroom are petitioners for naturalization Kalman John Berenyi and Magdalena Berenyi. Will you please tell the Court if you recognize both petitioners?

A. Yes, I do.

Q. And if you are acquainted with them?

A. Yes, I do.

The Court. Will you have Dr. Berenyi rise please, Dr. Kalman Berenyi first. Do you recognize him?

The Witness. Yes, sir.

The Court. And Dr. Magdalena Berenyi. Do you recognize her?

The Witness. Yes, sir.

The Court. Very well.

Q. Doctor, are these the same Kalman Berenyi and Magdalena Berenyi referred to in your sworn statements taken in Chicago?

A. Yes.

Mr. Sullivan. Counsel, your witness.

Mr. Spar. Well, if your Honor pleases, at this time I object to the form of the Government's proceeding in this matter. We are entitled to appear in open court and be confronted with the witnesses and to have the witnesses testify; and the mere preliminary statement made by the witness, although it is admissible into evi-

dence by statute, is not the decisive factor at all and I submit to your Honor that on direct examination—

The Court. Well, it is evidence.

Mr. Spar. It is some evidence, but your Honor stated at our preliminary hearing, sir, that he would be required to testify before this court before your Honor would consider that statement of his.

[fol. 15] The Court. Well, I don't know whether I made that second statement. I don't remember making that statement before. What I stated was if the statute made the preliminary report admissible in evidence, it would be received in evidence. That is all.

Mr. Spar. May I recall to your Honor—

The Court. What is that?

Mr. Spar. May I respectfully call to your Honor's—

The Court. No. If there is anything to be done, let it be done as a matter of Record. Take your position now as to what it is that you think you are entitled to.

Mr. Spar. My position is, sir, that I submit that this witness should be examined by the Government de novo before your Honor as to any evidence that the Government may wish to present against either or both of these petitioners.

The Court. Why isn't that so, Mr. Sullivan?

Mr. Sullivan. Your Honor, there is no reference in the statute for a de novo hearing. Section 335(b) which is keyed to 8 United States Code 1447 states that the petitioner may, upon demand, have the witnesses present in the courtroom, be examined under oath in the presence of the Court. There is no reference to a de novo hearing.

The Court. You cite Title 8, Section 1447, paragraph (b), is that right?

Mr. Sullivan. That is right.

The Court. And in that paragraph it is explicitly stated that the Court may in its discretion and shall upon demand of the petitioner require the examination

of the petitioner and the witnesses under oath before the Court and in the presence of the Court. You may proceed and examine this witness. I understand that Mr. Spar demands that the petitioners and the witnesses be examined in open court.

[fol. 16] Mr. Spar. That is correct, sir.

The Court. Very well.

Mr. Sullivan. Your Honor, may it please the Court, the Government takes the position that the preliminary examination—

The Court. I am not going to argue with you about it. I just read through the statute. Do you wish to examine this witness or not?

Mr. Sullivan. I think the Government will stand on its preliminary examination, your Honor.

The Court. You are the one that is running the Government's case not I.

Mr. Sullivan. Excuse me, your Honor.

The Court. I call your attention to the statute. As I recall it, at the preliminary conference that was had, the petitioners, through their counsel, made it quite clear to the Court in the presence of yourself, Mr. Sullivan, that they were making a demand under the statute, Title 8, Section 1447(b), that the petitioners and the witnesses be examined before the Court and in the presence of the Court. It is in compliance with that demand and with the statute that I am taking the position that I am.

By Mr. Sullivan:

Q. Doctor, I have before me in the case of Kalman John Berenyi Government Exhibit 1-A, wherein you testified on September 17 at the continued preliminary examination in the presence of the petitioners' counsel, wherein you were interrogated by Samuel D. Myers, General Attorney for Nationality. Do you recall making that statement?

A. Yes, sir.

Q. Giving that testimony?

A. Yes.

Q. Is the testimony given by you in this statement the truth?

Mr. Spar. Objected to.

The Court. Objection sustained.

Mr. Sullivan. Your Honor, excuse me.

[fol. 17] Q. Doctor, I have here before me Government Exhibit 2-G, which is a record of a sworn statement made by you to investigator Jay T. Kamphuis on July 19, 1959. Do you recall making that statement?

A. I beg your pardon. I didn't understand. Repeat your question please. Will you repeat the question?

Q. I have here Government Exhibit 2-G. It is a record of a sworn statement made by you before investigator Jay T. Kamphuis on July 9, 1959 in Chicago. Do you recall making that statement?

A. I recall I make that statement.

Q. Under oath?

A. I don't know. I can't remember offhand.

Q. That is your signature?

A. Yes, it is mine.

Q. Is the testimony given in this record of sworn statement the truth, Doctor?

Mr. Spar. Objected to, if your Honor pleases.

The Court. Objection sustained.

Q. In the case of Magdalena Berenyi, Doctor, I have a record of transcript of testimony taken at the continued preliminary examination held in Chicago on September 17, 1964, before Samuel D. Myers, General Attorney for Nationality, in the presence of Charles Spar, representing the petitioners. This is dated September 17, 1964. Do you recall making that statement?

A. In regards of Mrs. Berenyi I did make a statement.

Mr. Spar. Just a moment.

Q. Excuse me. This is a transcript of the testimony given by you on September 17. Do you recall giving this testimony?

A. Yes, I do recall I give the testimony.

Q. Are the statements in this transcript the truth?

Mr. Spar. Objected to, if your Honor pleases.

The Court. Objection sustained.

Q. I have here before me Government Exhibit 2-G which is a record of a sworn statement taken by investigator Jay [fol. 18] T. Kamphuis on July 9, 1959, in Chicago, record of a sworn statement given by you under oath. Do you recall making this statement?

A. Yes, I do recall I make this statement.

Q. That is your signature?

A. That is my signature. Yes, that is my signature.

Q. Is the testimony you gave in this testimony the truth?

A. Yes.

Mr. Spar. Objected to, if your Honor please. Just a moment, sir.

The Court. Sustained.

Q. Doctor, in your testimony you gave in Chicago you stated you were a member of the Communist Party?

A. Yes.

Mr. Spar. Objected to, if your Honor please.

The Court. Objection sustained.

Q. Were you ever a member of the Communist Party?

A. Yes.

Mr. Spar. If your Honor pleases—just a moment, sir—I have difficulty in hearing Mr. Sullivan because of his closeness to the witness.

The Court. Yes. Will you stand at a distance, Mr. Sullivan, so that everyone will be able to hear.

Q. Were you ever a member of the Communist Party?

A. Yes, I was.

Q. When and during what period were you a member of the Communist Party?

A. I believe since 1948 to 1956.

Q. During that period did you attend any Communist Party meetings?

A. Yes, I did.

Q. How often?

A. I can't say how often.

Q. Was it once a week, once a month?

A. There was once a month meeting usually, but I couldn't make all of them.

Q. Now during the years 1951 and 1952—

[fol. 19] The Court. I don't understand. Read the answer.

(Answer read.)

The Court. You may proceed.

Q. During the years 1951 and 1952, Doctor, did you attend Communist Party meetings once a month?

Mr. Spar. Objected to, if your Honor please, as to form and also on the ground that it is leading.

The Court. Well, it is leading. Objection sustained.

Q. In other words, you attended meetings once a month?

The Court. You testified that from 1948 to 1956 you were a member of the Communist Party.

The Witness. Yes, your Honor.

The Court. You further testified that you attended Party meetings which were held usually once a month, but you did not make all of them.

The Witness. Yes, sir.

The Court. Did these monthly meetings, as many of them as there were held, were they held during the period that you stated you were a member of the Party, from 1948 to 1956?

The Witness. Until 1950 I didn't make the Party meetings because I tried to get out of it. So from—

The Court. During what period you did not attend meetings?

The Witness. Oh, from 1948 to 1950 I did until I got into medical schools. I did not attend maybe two or three meetings. This is what I attended.

The Court. After that?

The Witness. After that, I had to attend them almost regularly.

The Court. Did you attend?

[fol. 20] The Witness. Not regularly, but I—well, I had the excuse that I wasn't there. For example, I had to be in school or I had to work in the hospital.

The Court. And that was during what period?

The Witness. While I was in the medical school 1949 or 1950 to 1955.

The Court. Through 1955?

The Witness. Yes.

The Court. Right through the year 1955?

The Witness. Yes. Not at all. Just half of 1955, until graduation.

The Court. When did you graduate?

The Witness. University of Budapest, Hungary.

The Court. I say when?

The Witness. 1955, August.

The Court. You may proceed.

Q. Doctor, did you ever see either Kalman John Berenyi or Magdalena Berenyi—

The Court. Excuse me. Why don't you take each one separately?

Q. Did you ever see Kalman John Berenyi at any of these Communist Party meetings?

A. Yes, I did see them.

Q. How often did you see them?

A. I can't say. I can't remember that.

Q. Would it be more than once?

A. I think so.

Q. Have you ever seen Magdalena Berenyi at any of these Communist Party meetings?

Mr. Spar. If your Honor pleases, with relation to Kalman now, that he has apparently completed that answer, may I ask that the time be specified, sir.

Q. During what period—

The Court. Going back to Kalman now.

[fol. 21] The Witness. Yes, sir.

The Court. You testified that you saw Kalman at some of these meetings.

The Witness. Yes, sir.

The Court. During what period?

The Witness. 1950. I believe 1950 or 1951, during possibly one year, this is the time when—

Q. During 1950-1951?

A. One of the year—I can't remember exactly.

Q. And did you see Magdalena Berenyi at these meetings also?

A. Never. I never have seen her at these meetings.

Q. But you want it definitely understood that you did see Kalman John Berenyi attending these Communist Party meetings?

Mr. Spar. Objected to as to form.

Q. —during 1951, 1950-1951.

The Court. Objection sustained. He testified that he saw them. There is no sense in having him repeat what he has already testified to.

Mr. Sullivan. Thank you, your Honor. Your witness.

Cross examination.

By Mr. Spar:

Q. Dr. Halasz, if you don't hear me, if my voice doesn't carry, please say so.

A. Yes, sir.

Q. Doctor, is it a fact, sir, that you attended the Budapest Medical University in a class three years behind the petitioner, Kalman Berenyi?

A. Yes, sir.

Q. You were not in any of his classes, is that right?

A. No.

Q. He was an upper classman?

A. Yes.

Q. And how many years of school are there in Hungary for medical studies?

A. Six years.

[fol. 22] Q. Now, sir, how large were the classes, the freshmen, the sophomore, junior, senior classes, etc.?

A. My class started about 350 and we graduated about 280. The whole university had about, I would say, 1800 to 2000 students, just the medical school.

Q. And that would be a six-year course?

A. That is right.

Q. And at no time was Dr. Kalman Berenyi in your classes of any kind?

A. That is right.

Q. Was he a friend of yours?

A. Yes.

Q. In what respect was he a friend of yours? Was he a social friend?

A. Well, we didn't go socially together. We knew each other. We talked to each other and several times he helped me with my medical studies.

Q. Now, Dr. Halasz, it is a fact, sir, that you joined the Communist Party while you were still a high school student?

A. Yes.

Q. It had nothing to do with your medical studies?

A. Yes, it had.

Q. And it was a voluntary act on your part, is that right, sir?

A. No.

Q. You did it because you felt it would help your profession?

A. Not because I thought it would help my profession. I was approached by two men. I don't want to give my whole life story, but I can tell that I had no parents when I was in high school. My father died when I was two and my mother was killed during the war. I was in an establishment which was a home for children who had no parents and the Communist Government took that away from us. They established a Government Dormitory. From there we went to school. It was handled by the Communist Government, and I was approached by two boys after I was in the dormitory for about two or three months—I can't remember exactly—that I should join the Communist Party. At that time I denied it. About a month later—

Q. When you say you denied, you mean you refused?

A. I refused to join it. Thank you. I refused to join.

[fol. 23] The Court. How old were you then?

The Witness. I was 17 or 18.

The Court. Seventeen or 18?

The Witness. Yes. I refused. A month later they came to me again and they told me if I do not join the Communist Party, I cannot stay in that establishment. So I had no choice because if I couldn't stay there, I couldn't keep up my studies because I had to make a living. And, therefore, I said: well, if that is all it takes, I join the Communist Party then.

Q. Well, now is it a fact that when you were in these dormitories, this is before you even entered medical school?

A. That is right.

Q. You were required to attend meetings or groups known as indoctrination groups?

A. Yes.

Q. And was that necessarily of the Communist Party or just groups of noncommunists who were called together to hear a Communist speak?

A. I would just like to ask one question from you, sir: do you mean at the time that I joined the Communist Party was I asked to first go to this indoctrination meeting?

Q. Yes, sir.

A. At that time they didn't care who joined the Communist Party. They took everybody.

Q. Well, sir, while you were still a student in high school —I am developing that first, sir?

A. Yes.

Q. Did they have indoctrination meetings?

A. Yes, they did.

Q. And noncommunists were called together?

A. Yes.

Q. And that was involuntary, is that right?

A. What you mean?

Q. That was a requirement? If you called to come to one of those meetings, you went?

A. That was a requirement.

Q. Is that right?

A. You had to. You had no choice.

[fol. 24] Q. And there would be Communists and noncommunists present at these meetings?

A. At that time, yes.

Q. And the idea was to convert voluntarily those who were noncommunists?

A. Yes.

Q. To the Party?

A. Yes.

Q. So that they would become active Party participants?

A. Yes.

Q. And then if they couldn't convert them, they would use the proverbial hammer to make you join.

A. Well, it happened.

Q. Now this is already in 1949 while you were still a high school boy?

A. That is right.

Q. Now did the situation change any when you went to the Medical University?

A. It did. In certain instances it got worse. In certain instances they selected the persons whom they want to join the Communist Party. So they didn't call everybody in there. They just went to him and told him that there would be a meeting here and "we want you to be there."

Q. Do I understand you to mean that if I were in this school, I would be picked on possibly and told, "please attend Friday afternoon at four o'clock in the afternoon, and you must be there in room 21," is that correct?

A. Yes.

Q. And if I was there, you believe I would be there at that room?

A. I didn't get your question.

Q. And you believe that I would be there at that room? I would have to be there?

A. Yes. I think you have to be there. No. I have to correct my answer. You don't have to be there, but you have to take what comes after if you are not there.

Q. Well, the consequences?

A. The consequences.

Q. That would be expulsion from school?

A. Could be.

Q. Withdrawal of the financial support?

A. Yes.

Q. By the state?

A. Yes.

Q. Possible jail?

A. Yes.

[fol. 25] Q. In other words, it was a very involuntary act about going to any of these meetings?

A. Well, it was involuntary but everybody had to know that it was voluntary.

Q. Well, sir, I am a little—for the Record—forgive me, sir—it gave the appearance of voluntariness but actually it was not a voluntary act?

A. Well, everybody knows what he was thinking.

Q. In other words, no one asked questions; they went?

A. That is right.

Q. When invited, it was a must, is that correct, sir?

A. Yes.

Q. Are these the meetings that you are referring to that you believe you saw Dr. Kalman J. Berenyi at?

A. In the medical school. Not while I was in high school.

Q. Well, you didn't know him then?

A. No, I did not know him then.

Q. Your first knowledge of the existence of Kalman J. Berenyi was only while at medical school?

A. Yes.

Q. And he was an upper classman among 1800 other students, is that right, sir?

A. We were closer. We were in the same dormitory.

Q. Sleeping quarters?

A. Yes.

Q. Did you ever hear Kalman J. Berenyi advocate Communism, the ideals of Communism?

A. Well, the same way as I did.

Q. Well, I am asking you a question. Did you ever hear him advocate, speak in favor of Communism?

A. Not while we were talking together.

Q. At any time?

A. There were certain meetings when they appointed a man and says—you have to tell this man and this is the line what you have to question these boys, and he had to do it. He had no choice.

Q. You mean he spoke at these meetings?

A. He had to.

The Court. Did he speak? Did he actually speak at these meetings?

[fol. 26] The Witness. Your Honor—

The Court. You are not being asked whether he had to or whether he did not have to. You are only being asked if in fact he did speak. Whether it was voluntary or not is another matter. But did you hear him speak?

The Witness. I can't recall that.

The Court. You can't recall what?

The Witness. I can't recall that I hear him speak on Communist Party meetings. Never speak. I can't recall exactly, but I think he never did.

Q. In favor of Communism or the ideals of International Communism you never heard Kalman Berenyi speak, is that right?

A. No.

Q. Did you hear him speak about medical subjects?

A. Yes.

Q. Is it a fact, Dr. Halasz, that Kalman Berenyi was considered an outstanding medical student at Budapest Medical College?

A. Well, he was the best—not in the dormitory where I was in the same dormitory—he was the best, and outstanding—of all the students in the medical school he was one of the best students.

Q. Dr. Halasz, isn't it a fact that at these meetings they were also talking about medical problems and medical studies and the various studies that you and others had in that school?

A. On what meetings?

Q. Well, the meetings that you had told Mr. Sullivan about that you attended?

A. Communist Party meetings?

Q. Communist meetings?

A. Yes. In that Party meeting we were discussing medical studies not subjects.

Q. And Dr. Kalman Berenyi—we are referring only in my conversation with you now as to the male member of the Berenyi family, sir—he spoke concerning medical problems, medical studies, is that right?

A. On those meetings he didn't speak at all.

[fol. 27] Q. He didn't talk at all?

A. Because that was—usually on those meetings the Communist Party officer talks and told us what to do, and he was—the Communist Party line.

Q. Now, sir, at that time you admit that you were a member of the Communist Party?

A. Yes.

Q. You were a card carrying Communist?

A. Beg your pardon.

Q. You were a card carrying Communist? You had a card showing your membership?

A. Yes.

Q. Did you ever see a card showing that Dr. Kalman Berenyi was a member of the Communist Party?

A. No. I never have seen a card.

Q. Did he ever tell you or admit to you that he was a member of the Communist Party?

A. No.

Q. Did he in any way participate in these so-called meetings of any kind?

A. Yes.

Q. In what way?

A. Well, he had to be there.

Q. Well, other than put his body into a chair and to sit down at that meeting did he do anything else?

A. I can't recall.

Q. Now isn't it a fact that there were many noncommunists who were called to these meetings?

A. Yes.

Q. And would you say out of a class or group of 40 people, how many would be noncommunists?

A. I don't know. It depends. Well, from 40 people could be 23 or 24, maybe, not Communists. Not in a class, no. Excuse me. Off the Record. I have to distinguish here if you are talking about a class of 40 people or you are talking about a class of—I mean 40 people who were on the Communist Party meeting.

Q. I am going to come to the question of Communist Party meetings, sir, in a few moments, the definition of that. But in this group that you referred to where you claim you saw Dr. Kalman Berenyi how many people would be present?

A. Well, I would say about 120-150 people.

Q. I see. And could you estimate for me now, sir, and for this Court of that 125 or so people that were present at [fol. 28] such meetings how many would be members of the Communist Party?

A. You are talking about meetings, you have to distinguish between—you see, we had meetings when it wasn't actually Communist Party meetings, but Communist Party members were on those meetings and everybody who was not Communist had to be there.

Q. Are you referring to that meeting as the meeting that you saw Dr. Berenyi?

A. No.

Q. Was he present at those meetings?

A. He was present on those meetings. He had no choice. He was ordered to be present.

Q. Now you referred to other meetings?

A. Yes.

Q. Now was it advertised as a Communist Party meeting?

A. Usually.

Q. Well, what do you mean by "usually," sir?

A. Well, between the Communist Party members. They said, "we have a meeting this afternoon. Be there."

Q. Did that apply to noncommunists?

A. Many times.

Q. Well, did you know whether or not to your knowledge Dr. Kalman Berenyi was ever told, "be present at a Communist Party meeting even though you are not a member."

A. I never told him that. You say if somebody else told him?

Q. To your knowledge did you know of anybody that told him that this was to be a Communist Party meeting?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. And there were no posters on the walls saying that on a certain date and at a certain time in a room that was designated the Communist Party would meet?

A. Yes. Sometimes there were such posters.

Q. There were sometimes?

A. Yes.

Q. But oftentimes they didn't have such notices?

A. Nobody watched those posters. It was nothing but Communist propaganda.

Q. And you don't know if Dr. Kalman Berenyi ever saw such a notice and then went to such a meeting that was [fol. 29] labelled or advertised "Communist Party"?

A. There was such a meeting where we had—

Q. My question to you is: do you know now whether or not Dr. Kalman Berenyi ever saw such a notice and then went to a Communist Party meeting?

A. I don't know that.

Q. And isn't it a fact that it was within the group itself of Communists that you knew it to be a Communist Party meeting; isn't that right?

A. Yes.

Q. Do you know whether or not outsiders who were non-communists and who were directed to be present at a meeting at a certain place knew it in fact to be a Communist Party meeting?

A. Would you repeat your question?

(Question read.)

The Court. The question is confusing. Just a moment. You may restate your question.

Q. Do you know for a fact, sir, that Kalman Berenyi knew it to be a Communist Party meeting on the occasions when he did attend it, according to your testimony?

A. You ask me if he knew that was a Communist Party meeting going on. Well, I don't know if he was told or not.

Q. Now isn't it a fact also that at these so-called meetings indoctrination took place, trying to convert and induce noncommunists to join?

A. Certainly.

The Court. Are you talking about the so-called meetings of the Communists as distinguished from the student meetings?

Mr. Spar. Yes, sir.

Q. Is that right?

A. Well, there were such a thing because in case of Dr. Berenyi being the best student in the group there, and if you know the Communists, they always want to show that the best is us and we are better than the rest of them. They want naturally the best student to be a member of the Communist Party.

[fol. 30] Q. And, Dr. Halasz, isn't it a fact that to your knowledge Dr. Kalman Berenyi never joined the Communist Party?

A. Well, I can't answer that. As far as I know, and I am stating it again, that I have seen him on Communist Party meetings.

Q. Just as you described to this Court now?

A. As I say, on Communist Party meetings I have seen him. I have never seen his party books.

Q. To your knowledge now did he ever join the Communist Party? Do you know, sir?

A. Well, how would—I don't know if he joined it; but as I told you, I have seen him on the meetings.

Q. Now at these meetings there were Communists and noncommunists present?

A. Most of the time there were only Communists present.

Q. Well, sir, at the meetings where Dr. Kalman Berenyi was were there noncommunists present?

A. Many times.

Q. So, therefore, am I correct in saying that there were meetings of this organization, whatever it be, that was both Communists and noncommunists?

A. Yes, there were such a meeting.

Q. And, as a matter of fact, you were the door man, weren't you, admitting people into the meetings?

A. During this six-year period a couple of times I was the door man. Somebody said, "go and see if everybody has books."

The Court. Everybody has what?

The Witness. The Communist Party book.

Q. Did you ever see a Communist Party book in the possession of Dr. Kalman Berenyi?

A. No, I did not.

Q. And did you know from your Party records, if you know of any, that he was listed as a Communist Party member?

A. I never have seen such a Party record.

Q. Now, Dr. Halasz, on direct examination you testified that he attended these meetings which you called Communist Party meetings?

A. Yes.

[fol. 31] Q. Can you tell us with some degree of certainty as to how many meetings you saw Dr. Berenyi at?

A. No, I can't tell that. Possible I see him maybe two or three times.

Q. Possibly?

A. That is all.

Q. And it could have been once?

A. It could be more or it could be once?

Q. You kept no records on it?

A. No.

Q. And he was not active in anything? He just sat there?

A. Oh, he was active, helping the rest of the students to study his medical science.

Q. But at the so-called meetings once, twice or three times he never said a word, is that right?

A. No. Unless he was straight asked because it can happen that somebody was asked straight about certain things.

Q. Did you have any personal memory of what happened at any of these meetings that Dr. Kalman Berenyi attended?

A. No, I recall.

Q. Are you now testifying merely from the thoughts of what had happened?

A. Yes.

Q. Do you have a memory of what happened at any particular meeting?

A. Oh, well, something like that. The Party secretary who was a secretary of that duty, get up, call the meeting to start. Then he made a speech about certain things. Then he brought up who was wrong in certain things, who was right; and then he brought up what is in the next month or next half year will be the Party line. What they have to do. And then there were—I can't remember—but there were certain times voting when they brought in something they have to establish, for example, somebody had to be thrown out from the Communist Party because his father had 20 acres of land and they find out, or for some other reason, his studies wasn't good. Then we would vote on it and usually the guests, who were guests at those meetings, had no right to vote. But they were there because they wanted to show the rest of the people and the boys that it is, as they call, democratic basis.

[fol. 32] Q. Dr. Halasz, did you ever see Dr. Kalman Berenyi vote on any subject whatever at these so-called Communist Party meetings?

A. I can't recall those.

Q. Dr. Halasz, isn't it normal and is it your belief now that what Dr. Berenyi did was come to these meetings by urgent and demanding invitation?

A. I don't know that.

Q. You don't know?

A. I don't know that, whether he was there as a member of the Party or he was urged there. I know one thing; that I have seen him there; that I have seen him there, and that is all I can say.

Q. Do you know for a fact, sir, that there are people who may have attended that meeting that didn't even know that it was a Communist Party meeting, those who were not Communists?

Mr. Sullivan. Objection, your Honor. The question calls for a conclusion.

The Court. How would he know that?

Mr. Spar. This is cross-examination, sir.

The Court. I know.

Mr. Spar. If he knows from his past experience at those particular meetings.

The Court. You may answer.

A. No. I never ask anybody to come to the Communist Party meeting. No. I don't know whether he was asked or he was told to go to this meeting. I don't know whether he knew that it was a Communist Party meeting or not. I do remember and I stated that these meetings were closed, since I talked about this, and I remember—thought about this—and I remember there were meetings when it was closed. There were most of the meetings where it wasn't a closed Party meeting.

Q. Do you know now whether Dr. Berenyi attended open or closed meetings?

A. I can't recall.

Q. Did you ever have any discussions with Dr. Berenyi concerning his beliefs in Communism or the principles of [fol. 33] Communism?

A. Oh, sometimes certain things came up, certain questions. He didn't say too much; and if he said something, it wasn't for the favor of the Communists.

Q. It was against the Communists?

A. But there were certain questions. You see, in the medical school we had to study Marxism, Leninism. It was a subject. It was a subject like internal medicine or surgery or any other medical subject.

Q. May I interrupt you, sir. For the Record was Leninism, Marxism, Communism as much a part of the curriculum of the courses studied of the medical school as pathology and other medical subjects?

A. It was.

Q. It was a requirement?

A. It was a requirement. In fact, I know somebody who failed that subject and had to repeat a whole year.

Q. The entire medical year for failing political—

A. Failing that subject.

Q. And thus if Dr. Berenyi took these subjects in school, in medical school, it was the normal, natural thing to take for any medical student?

A. Everybody had to take it.

Q. Regardless of race, color, religion or political belief?

A. Yes.

Q. Now, Dr. Halasz, did you ever have any opinion after talking to Dr. Kalman Berenyi, after watching his actions, as to whether he was a member, whether he was a Communist?

A. No.

Mr. Sullivan. Objection, your Honor.

The Court. Objection sustained. The answer is ordered stricken.

Q. Did you ever discuss Party principles with him?

A. I beg your pardon.

Q. Did you ever discuss with Dr. Kalman Berenyi Party principles?

A. In the course of study, yes. Otherwise, not.

Q. And as a result of your talk with Kalman Berenyi, could you tell this Court what his feelings were towards [fol. 34] Communism?

A. I don't believe he was a Communist, even if he was a member of the Communist Party. I don't believe he was Communist in heart.

Q. And, as a matter of fact, you are not claiming that he was a member of the Communist Party?

A. Well—

Mr. Sullivan. I object. It calls for a conclusion.

(Question and answer read.)

The Court. Do you object to that? Objection sustained.

Mr. Spar. May it please your Honor—

The Court. It is not what he claims.

Q. Do you assert that he is a member—do you assert that he was a member of the Communist Party?

A. I thought he was a member of the Communist Party because I have seen him on those certain meetings.

Q. And that was all you had to base it on?

A. That is right.

Q. Now, Dr. Halasz, do you remember being examined by an Immigrant Inspector in Chicago, Illinois, on July the 9th, 1959?

A. Yes.

Q. And do you remember being asked this question and making this answer:

"Did you ever discuss Party principles with him, either in a meeting, or personally?"

Remember that question?

A. No. I don't know. I can't remember.

Q. Do you remember making this answer under oath:

"No, but I could tell he didn't like the regime. He mentioned certain things I can't recall now, but which were against the Party and the regime, which would come out and for which we could get ten years to life."

A. That is right.

[fol. 35] Q. And was that a fact, sir? He did speak against the regime?

A. Well—

The Court. Are you reading from a document in evidence? What is that marked?

Mr. Spar. I haven't got your Honor's exhibit, sir, but it is—

The Court. Check and let me know. Check it and tell me.

Mr. Spar. 1-G, sir.

The Court. 1-G.

Q. Dr. Halasz, just a few questions, sir, with reference now, and I call your attention to Dr. Magdalena Berenyi: Dr. Magdalena Berenyi was not married while she was attending school as far you know, is that right?

A. Well, I know her before she married Dr. Berenyi and I know her after she married Dr. Berenyi.

Q. And did you know whether or not she ever attended any of these meetings?

A. I don't think she has ever been there. I never seen her.

Q. Were you friendly with Dr. Magdalena Berenyi?

A. Well, we say hello to each other. Sometimes we talk. I have seen her going out and coming in.

Q. Do you know whether or not to your knowledge she was very close with her future husband, Dr. Kalman Berenyi, while she attended school?

A. They were very close.

Q. Well, did she stay in the same dormitory?

A. Yes. She stayed in the same dormitory but in a different floor.

Q. Different floor?

A. Yes.

Q. Did you constantly see them together?

A. At the beginning not, but they were going to the same class. So they have to be together.

Q. They just attended the same classes?

A. That is right.

Q. That was three years above yours?

A. Yes.

[fol. 36] Q. And have you ever talked to Mrs. Magdalena Berenyi concerning politics at any time?

A. No. I don't think so.

Q. And you know nothing about her political beliefs one way or the other, is that right, sir?

A. Well, I could say I know that she was not a Communist.

Mr. Spar. Thank you, sir. No further questions.

The Court. Any redirect? If not, you are excused. May I recall you to the stand please. It is not quite clear to me whether or not at the closed Party meetings that you mentioned only members of the Communist Party were admitted.

The Witness. Well, as far as I know, there were only members on those Party meetings. But I wasn't an officer in this Party and I—

The Court. Well, you have answered my question. Now you testified that usually there were monthly meetings.

The Witness. Yes.

The Court. Were these monthly meetings closed Party meetings or not?

The Witness. Well, your Honor, I don't know. Most of the time they called in somebody whom they wanted to indoctrinate into the Party.

The Court. Only one or more than one?

The Witness. Well, several of the students was called in.

The Court. Would they be identified to the members of that meeting as being nonmembers of the Party?

The Witness. No.

The Court. And this happened at these monthly meetings that you mentioned?

The Witness. Yes. Sometimes they said it is a closed Party meeting. They meant by that that only the Party members can say anything or vote on any subject.

[fol. 37] The Court. But it was possible that non-Communists—when I say "noncommunists," they who were not members of the Party were present, but if they were present, they were not allowed to speak and they were not allowed to vote, is that right?

The Witness. That is right, yes.

The Court. All right. Thank you.

GYORGY KURY, sworn.

Direct examination.

By Mr. Sullivan:

Q. Will you please state your full name?

A. Gyorgy Kury.

Q. Where do you reside?

A. 165 Longwood Avenue, Brookline, Massachusetts.

Q. What is your occupation or profession?

A. Physician.

Q. Are you a licensed practicing member of the medical profession?

A. Yes.

Q. In what state?

A. In Massachusetts and Maine.

Q. Where did you obtain your medical education?

A. In Hungary.

Q. Doctor, I have in the case of Kalman John Berenyi Government Exhibit 1-B—this is a transcript of testimony taken at the preliminary examination at Boston on August 21, 1964, before me. Are you the same Dr. Kury who testified at that time?

A. Yes, I am.

Q. I also have Government Exhibit 1-F which is a record of a sworn statement taken by T. R. Cass from you on

April 14, 1959, pertaining to Kalman John Berenyi and Magdalena Berenyi. Referring to Exhibit 1-B, this refers to both petitioners Kalman John Berenyi and Magdalena Berenyi?

A. Yes.

Q. Do you identify these exhibits?

A. Yes.

Q. This is Exhibit 2-B and 2-F. It is a record of the same testimony, a transcript of the same record as in the [fol. 38] case of Kalman John Berenyi, and 2-F is the same as Exhibit 1-F in the case of John Berenyi?

A. Yes.

Q. In other words, these exhibits are one in the same?

A. Yes.

Q. These exhibits pertaining to both petitioners?

A. Yes.

Q. Doctor, you stated that you received your medical education at the University of Budapest Medical School, is that correct?

A. Yes. That is correct.

Q. Present in the courtroom, Doctor, are petitioners Kalman John Berenyi and Magdalena Berenyi. Will you please tell the Court if you recognize the petitioners and if you are acquainted with them?

A. Yes, I do.

Q. Will you please explain to the Court where you first met Kalman John Berenyi and Magdalena Berenyi?

A. Well, we were classmates. I started my medical study in 1946.

Q. Were they classmates of yours at that time?

A. Yes.

Q. In other words, they were in the same class?

A. Yes.

Q. And there is no question in your mind, Doctor—

The Court. When was the first time you met them?

The Witness. Medical studies.

The Court. What year?

The Witness. Well, in 1946 Dr. Kalman Berenyi. I don't remember exactly when I met Dr. Magdalena Berenyi. Probably in 1947.

Q. Doctor, there is no question in your mind that the Kalman John Berenyi and Magdalena Berenyi present in the courtroom are the same persons referred to in your testimony previously given?

A. They are the same, yes.

Q. Now, Doctor, I want to listen carefully. Do you know of your own knowledge whether Kalman John Berenyi was ever a member of the Communist Party?

A. Yes.

[fol. 39] Mr. Spar. That is objected to. Just a moment, sir. That is objected to as calling for a conclusion.

The Court. Doesn't that call for a conclusion? Isn't that a matter—just a moment—isn't this a matter for the Court to decide on the basis of evidence tending to prove that Dr. Kalman Berenyi was a member? You may ask him what he saw, what he heard, but you may not ask him for a conclusion.

Q. Do you know if Kalman John Berenyi was ever a member of the Communist Party?

Mr. Spar. Objected to.

The Court. This is objected to and I will sustain the objection. I just got through explaining to you that this is a matter, a conclusion for the Court to make upon all the evidence presented before me. But you may ask him questions as to what he saw, what he heard, that are relevant to that issue.

Q. Doctor, during your course of medical school, did you attend any meetings, indoctrination meetings?

A. Well, as I told you before, I was a member of this student group. I did not attend Communist Party meetings or other organizations, other than indoctrination meetings and this student group had meetings.

Q. Was either Kalman John Berenyi or Magdalena Berenyi present at any of these meetings?

A. Yes. Dr. Kalman Berenyi was.

Q. Did you ever hear—

The Court. Well, was Dr. Magdalena Berenyi there?

The Witness. I don't recall seeing her.

The Court. It would be helpful to the Court if instead of asking a question, a double question relating to both petitioners, if you were to ask questions only with reference to each one separately.

[fol. 40] Q. Did you ever observe Kalman John Berenyi at any of these meetings?

A. Yes, I did.

Q. Did you ever observe Magdalena Berenyi at any of these meetings?

Mr. Spar. If your Honor please, may I ask that the witness be required at this time to fix the time and the place, sir.

The Court. Well, I suppose that will be done in the course—

Q. Do you recall when these meetings were held? What year?

A. Well, at these meetings to which I am referring was in September, 1948.

Q. 1948. Did you ever hear Kalman John Berenyi ever say that he was a member of the Communist Party?

Mr. Spar. Objected to. Suggestive and leading, if the Court please.

The Court. It is leading. I will sustain the objection. Were you yourself a member of the Communist Party?

The Witness. No, I was not.

The Court. You were never a member?

The Witness. Never.

The Court. Did you discuss Communism or the Communist Party with Dr. Kalman Berenyi?

The Witness. Well, at this meeting—

The Court. Did you?

The Witness. No, I did not speak at those meetings.

The Court. My question is: did you ever discuss the matter of Communism or membership in the Communist Party with Dr. Kalman Berenyi? Ever?

The Witness. Well, at this time and this meeting I recall he sat—he said he was a member of the Communist [fol. 41] Party and joined the Party after the Soviet troops occupied Hungary.

Mr. Spar. Your Honor please, I move to strike out the answer as not responsive.

The Court. Motion denied. At what meeting was this?

The Witness. Well, this was—there is two. Student organization meeting which had a special name in Hungarian, so-called Tanulokor.

The Court. What does it mean?

The Witness. It means that the student class was divided up.

The Court. What is the literal meaning of those words?

The Witness. Well, it is a group for study.

The Court. A group for study?

The Witness. Yes.

The Court. Now when and where was the meeting held? When and where was the meeting held at which you heard Dr. Kalman say that he was a member of the Communist Party?

The Witness. This was in September, 1948. I don't recall what day.

The Court. And where?

The Witness. This was at the university.

The Court. Where at the university?

The Witness. In a clinical group. I don't recall the room.

The Court. Very well.

Q. Did Kalman John Berenyi ever advocate Communist ideology?

A. Well, I must say some word—

Mr. Spar. If your Honor please, I object to the form of that question.

The Court. Well, the form is objectionable and I will sustain the objection. You may ask him what he heard Dr. [fol. 42] Kalman Berenyi say and let him tell us if he knows; and if Dr. Berenyi, Kalman Berenyi said anything, what it was that was said, and then it is for me to decide whether that was advocacy or not.

Q. Was Kalman Berenyi ever an instructor at any of these meetings?

A. Yes. He was personally responsible for the ideology education of this group.

Mr. Spar. Objection, your Honor. Not responsive.

The Court. You are not to interrupt a witness in the middle of an answer. Only causes confusion that way. Read the question and the answer as far as it went.

(Question and answer read.)

The Court. Everything after the answer Yes is ordered stricken. Your answer is Yes?

The Witness. Yes.

The Court. What was he an instructor in? What did he instruct in?

The Witness. Well, he was, as I said, responsible for the ideology—

The Court. What did he instruct in?

The Witness. Marxism, Leninism. He said he was ideological person responsible for ideological education. He told us. Convince us to read Soviet books. We have to discuss newspaper, news among us and occasionally to see Soviet movies.

The Court. What if anything did he say about Communist ideology?

The Witness. Well, I don't recall. This is what words, what he says: prefers that you do all these things and make up your mind, but he did not actually ask us to join the Communist Party.

Mr. Spar. Your Honor please, before the witness goes further with the questions, may I ask the Reporter to [fol. 43] please repeat his answer to two preceding questions. He was facing your Honor and I frankly missed—

The Court. How many questions?

Mr. Spar. About two or three questions.

(Previous three questions and answers read.)

The Court. You may proceed.

Cross examination.

By Mr. Spar:

Q. Dr. Kury, you were recently admitted to practice medicine in the State of Massachusetts, is that right?

A. Yes.

Q. This year?

A. Yes.

Q. Now, Dr. Kury, you stated in response to the Court's question you were never a member of the Communist Party, is that right?

A. Yes.

Q. Were you ever called to any indoctrination meetings at the school that you attended?

A. Except of those meetings which I am referring to, the student group organization, I was not called to any.

Q. Do you know to your knowledge whether other students were called to indoctrination meetings other than the study classes?

A. I don't have any positive knowledge about that.

Q. Well, did you hear of it?

A. No.

Q. Don't know anything. You don't know anything about it?

A. No. It might have been, but I don't know anything.

Q. Dr. Kury, is it a fact that you entered school at about the same time as Dr. Kalman Berenyi?

A. Yes, sir.

Q. And you were a classmate of his in the freshman year?

A. Yes.

Q. And did you complete your freshman year?

A. In this year, yes.

Q. When did you complete?

A. Well, we started in September, 1946, and finished in July of next year.

[fol. 44] Q. Now in 1946 when you started were the Communists already in power in Hungary? Had they taken over the Government?

A. No. They did not. They were a very influential group and—

Q. Forgive me.

A. They were a very influential group but they did not take over the Government.

Q. As yet. Had they taken over the control of the medical university?

A. Well, the same thing applies to the medical university. They were very influential, but they did not take it over.

Q. Now I am referring, sir, to your freshman year—

The Court. May I interrupt you at this point to ask the witness, so I can follow the testimony more closely, when was it that the Communists took over the Government in Hungary?

The Witness. This was in 1948.

The Court. What month?

The Witness. Well, actually the final takeover, I think, was 1949, but already in 1948 they were almost in complete control. But officially I think it was in 1949.

The Court. What part of the year in 1948 were the Communists almost in complete control?

The Witness. Well, I really don't recall exactly. I think already at the time—already summertime.

The Court. Was it or was it not before September, 1948?

The Witness. It was before September, yes.

Q. Now, Doctor, how many students were there in the freshman class?

A. Well, we started, as I recall—I don't know exact figures—we were about 600.

Q. Were you friendly during the first year, your freshman year, with Dr. Kalman Berenyi?

A. No.

Q. Did you talk to him?

A. No.

Q. Were you an enemy?

A. No.

[fol. 45] Q. Just didn't have anything to do—

A. Yes.

Q. There were many students like that?

A. Yes.

Q. Now with relation to Dr. Magdalena Berenyi, she wasn't married and known under the name of Berenyi at that time, is that right?

A. No. Her name was Retsagi.

Q. And did you know Dr. Magdalena Retsagi?

A. I did not know her.

Q. She was a member of the same class as yours?

A. Yes. I recall—I was not even sure—my first recollection is about 1947 when I saw her.

Q. Now, Doctor, in 1946 did they organize the study groups, small components of 20 or so students or was that organized later?

A. It was organized later.

Q. Now, sir, am I correct in saying that as far as you know, you have no information whatever concerning either of the two petitioners relating to the freshman year that you attended?

A. No.

Q. Is that correct?

A. You mean—please repeat the question.

Q. All right, sir. You have no information to give us concerning the political background or thoughts of either of the two petitioners as far as the freshman year is concerned?

A. No. I did not recollect them.

Q. Now, sir, did you enter the sophomore year, 1947, with the two doctors?

A. Yes.

Q. Did you meet the second year?

A. Yes.

Q. And was Dr. Kalman Berenyi also a sophomore at the same time with you?

A. Yes, he was in the same year.

Q. And was his present wife, Magdalena Berenyi, also a member of the same sophomore class?

A. As I recall, yes; but, of course, I went through three classes because in 1949—

Q. No, Doctor. I am talking about 1947, your sophomore year, sir?

A. Yes.

Q. And you continued to finish that year?

A. Yes.

Q. And Dr. Kalman Berenyi to your knowledge finished that year?

A. Yes.

[fol. 46] Q. And Dr. Magdalena Berenyi finished that year?

A. Yes, to my knowledge.

Q. Any political activity during that year that you wish to tell us of relating to the Doctors Berenyi?

A. Well, the so-called Tankulokor, which I am referring to, I recall formed during the last three months of 1948.

Q. Now, Doctor, is that part of your sophomore year?

A. But I was not a member then.

Q. Well, sir, I am talking now of your sophomore year. Did that end in June or July of 1947?

A. Yes.

Q. 1948?

A. 1948, yes.

Q. Well, during your sophomore year were any of these study groups formed?

A. Yes. I think some of them were formed in the spring of 1948.

Q. And was that already before or after the Communists had taken power, decisive power in Hungary?

A. Well, I think it was a little before.

Q. Now there were basically study groups, is that correct?

A. Yes.

Q. And this was in the spring of 1948?

A. Yes.

Q. Well, now basically, Doctor, am I correct in saying that the student body was divided into small groups and required to study their subjects?

A. Yes.

Q. Is that right, sir?

A. Yes.

Q. And these were medical studies?

A. Well, partly medical; partly political.

Q. Well, do you want me to understand, sir, that political studies were required at the medical school even before the Communists took over complete control of Hungary?

A. I don't recall. When I finished the university, they were obligatory, but I think in 1948 they were not obligatory yet. Wasn't part of the curriculum.

Q. And political studies were not required at these little classroom or debates or conferences, is that right?

A. Well, as I told you, it was a part of your curriculum, but they expect you to read Soviet literature, to see movies and read Communist newspapers.

[fol. 47] Q. Now, Dr. Kury, you testified today that you completed your second year. This is before the Communist takeover?

A. Yes.

Q. Was Dr. Kalman Berenyi a member of your study group in 1948 in your sophomore year?

A. You mean before September, 1948?

Q. Yes, sir.

A. I don't recall. He might have been, but I don't have any positive knowledge.

Q. And this was a small group of how many people?

A. Oh, about 20, I think.

Q. Well, sir, was the lady that we now call Dr. Magdalena Berenyi—at that time an unmarried person—was she a member of your study group prior to the completion of your sophomore year?

A. Well, I was not a member of this study group. I only joined in September, 1948.

Q. Well, Doctor, were you a member of any study group before September of 1948?

A. No.

Q. Wasn't it obligatory in the spring of 1948 already to join the study group to study medical problems?

A. Well, this type of study group was not obligatory.

The Court. Read the answer.

(Answer read.)

Q. Now, Doctor, just to get the Record straight in my mind, am I correct in saying that in addition to study groups there was still a student body group with another name, is that right?

A. Well, there were several groups there so—

Q. Well, the group that we call the Mefesz?

A. Mefesz, M-e-f-e-s-z.

The Court. What does that mean?

The Witness. This is also an association of Hungarian University students. I don't recall something else.

[fol. 48] Q. Now everybody belonged to the organization known as Mefesz?

A. No, not everybody.

Q. Not everybody?

A. No.

Q. Did you belong?

A. No, I did not belong. Most of them belonged.

Q. Was it necessarily political?

A. It was. It was very unwise—I won't say it was very preferable to belong to it but—

Q. Was it a political organization or a student organization?

A. Well, it was mainly a student organization.

The Court. Well, I don't quite see the dichotomy quite clearly. I suppose you may have a student organization which at the same time is a political organization.

The Witness. Yes.

Mr. Spar. I realize that.

Q. Was this a political organization within the student body?

A. You mean the Mefesz?

Q. Yes.

A. I think it was. I mean you had nothing to do with this so-called Tanuloker, who is our group, but might have been possibly several were members of the Mefesz.

Q. Well, isn't it a fact that practically all of the students of the college were members of Mefesz as a student group and it was not a political group? It was a student group?

A. It was mainly a student group and I know many people belong to it and I don't really recall how many.

The Court. What were some of their activities? What would they do?

The Witness. Well, I did not belong to it. I really don't know. But I think it was really not amounting to much. It was mainly concerned with the university not the Mefesz.

[fol. 49] Q. Now, Doctor, after you completed your sophomore study, did you return to school for the third year of study?

A. Yes, sir.

Q. Was that in September of 1948?

A. 1948, yes.

Q. Now, Doctor, was Dr. Kalman Berenyi one of your classmates during that year?

A. Yes.

Q. Did he attend any classes with you?

A. Yes.

Q. Did he at any time speak to you and tell you of his political beliefs and opinions?

A. You mean personally to me?

Q. Yes.

A. I don't recall. He spoke openly but not—we were not really closely related.

Q. Now, Doctor, as to Dr. Magdalena Berenyi, the female petitioner, was she in your class as a co-student during the third year?

A. You mean in the whole class, yes.

Q. Did she attend any of the particular classes with you during the third year?

A. You mean medical classes?

Q. Medical classes.

A. Yes.

Q. Did Dr. Magdalena Berenyi at any time ever give you any statements or make any statements to you relating to political opinion?

A. No.

Q. At any time?

A. No.

Q. Were you unfriendly or friendly with her?

A. I had no relation. Just saw each other.

Q. You have no information from your own personal knowledge?

A. No.

Q. Is that right?

A. Yes.

Q. Concerning Magdalena?

A. Yes.

Q. Now sir, did you complete your third year of study?
A. No, I did not complete my third year study.
Q. Just a minute, sir.

The Court. Did he complete his third year or fourth year?
Mr. Spar. Third year, sir.
The Court. Third year?
Mr. Spar. Yes.
[fol. 50] The Witness. I mean—I am sorry. I completed my third year studies. I did not complete my fourth year.

Q. Now during the third year of study that you were in the school did you attend the study groups?
A. During the third year?
Q. Yes.
A. Yes, I attended for not long but—
Q. Beg your pardon.
A. For not long but I attended.
Q. Wasn't it obligatory to the student body to attend the study groups?
A. Well, they were so-called voluntary groups. So officially it was not obligatory.
Q. Weren't you assigned to a particular study group?
A. Yes.
Q. By your professors and told to attend at a certain hour and a day to study with the other members of your class?
A. Yes. But I don't know who made out the list and who made, really who selected members of these groups.
Q. When were you first assigned to a study group?
A. Well, I saw my name in September, 1948.
Q. Now am I correct in saying that you never saw your name before that time on a study group?
A. No, I did not. I joined it at this time.
Q. In September of 1948 did you attend the study group?
A. Yes.
Q. Do you know where it was?
A. This was at the medical university.

Q. And, Doctor, how many people were present?

A. There were about 20, I think.

Q. Were there any upper classmen present, students above your class?

A. Well, yes.

Q. Were they there to instruct or to assist or guide the lower classmen?

A. Well, this was to guide them in medical studies.

Q. Now did anybody act as the president or as the leader?

A. There were two leaders. One was responsible for the [fol. 51] medical education; the other for ideological education.

Q. It was at this time that you claim Dr. Kalman Berenyi made a statement?

A. Yes, during the meeting.

Q. This is the first meeting you went to?

A. Yes.

Q. Did you ever make a record or a note of the conversation or the statements made by Dr. Kalman Berenyi?

A. No.

Q. Yes or no?

A. No.

Q. Did you at any time create a file or make a statement other than what you have stated to the Immigration Service concerning Dr. Kalman Berenyi?

A. What do you mean?

Q. As to the statement that he made in September of 1948?

The Court. What statement?

Mr. Spar. That he testified to on direct examination.

The Court. Why not tell him so that there will be no question about it.

Q. Doctor, you have testified that Kalman Berenyi at this first meeting made a statement that he was a member of the Communist Party?

A. Yes.

Q. Now, Doctor Kury, can you give us the exact words to the best of your ability and knowledge at this time as to what Kalman Berenyi stated at that time?

A. I cannot. It was long ago. I cannot give you any exact answer beyond just what I said before.

Q. Well, sir, give us the substance of this statement. How long did the statement take and what did he say?

A. Well, it took about five or ten minutes. I don't really recall. Not more than five minutes usually when each member gave his life story.

Q. What did he say?

A. Well, he says that he joined the Communist Party in 19—after the Soviet troops occupied Hungary in 1945, and he is a man who is responsible for our ideological education, and said in general that all we can go to see Soviet [fol. 52] film sometimes and how we can discuss newspapers and to read books, ideological books.

The Court. Hold it please. Read the answer to me, will you?

(Answer read.)

Q. Now, Doctor, how many people were present at that meeting?

A. I think about 20. I don't recall.

Q. Doctor, do you know the names of any of the persons who were present?

A. Well, I don't recall now. If you showed me photographs—

Mr. Sullivan. Objection, your Honor.

The Court. What is that? What is the question?

(Question read.)

The Court. You may answer yes or no. Do you remember names?

The Witness. No, I don't remember. If you showed me some photographs, maybe I would recall.

Q. Well, do you remember the name of Dr. Kalman Berenyi?

A. Yes. He was most important person at these meetings.

Q. Did you remember the name of the student leader?

A. No, I don't recall.

Q. Was he important?

A. Not as far as our future is concerned.

Q. Do you remember the names of any of the upper classmen who were present?

A. You mean—there were no other except the person who was responsible for our medical education. All of us were in the same class.

Q. Do you remember the names of any of the other co-students in the same class as you who were present at this so-called meeting in September 1948?

A. I don't recall.

Q. Do you know whether or not any of these people are here in the United States?

A. I don't know really.

[fol. 53] Q. Were you friendly with the people who attended this meeting?

A. Well, I just said that I did not make any—did not do anything that—

Q. Now prior to this time did you know—when you attended this meeting, did you know the names of the co-students who were there with you?

A. I don't really recall.

Q. Well, when you were there at the meeting did you know them as co-students?

A. I think I knew a few of them.

Q. Now, Doctor, you testified that you did not complete your fourth year?

A. Yes.

Q. Well, before we go to your fourth year, Dr. Kury, may I ask you, sir: other than this one occasion in September of 1948 to which you have just testified, do you claim

you ever heard Dr. Kalman Berenyi make any statement at any other time that he was a member or had been a member of the Communist Party?

A. No. I don't recall.

Q. How many meetings of the group did you attend?

A. Well, this was the only meeting of this particular group and I asked—I was transferred to another group.

Q. Now, Dr. Kury, is it a fact that all of these Party groups, all of these meeting groups were operated on the same basis? They were study groups and some indoctrination?

A. Yes.

Q. And you didn't stay in this group at all, is that right?

A. No.

Q. Now you were transferred to another group?

A. Yes. I asked—

Q. You asked for it, is that right?

A. Yes.

Q. And, Dr. Kury, was the other group a study group studying medicine and also receiving ideological training?

A. Yes.

Q. Now, Doctor, you didn't like the group that you were in first?

A. Yes.

Q. Is that right?

A. Yes.

[fol. 54] Q. Is it a fact you didn't like Dr. Berenyi?

A. Well, I personally—I did not have anything against him.

Q. But you didn't like this group?

A. Well, I knew the other group and there were less Party members there, and the leader was more friendly, so I asked to be transferred. I did not say exactly this. I said I am interested in pathology and more pathology go in on that. But this was just one—

The Court. Just one what?

The Witness. I wanted to say this was just an excuse, the pathology.

Q. But the other group you attended was not one which Dr. Berenyi attended?

A. No.

Q. And was there a group leader from the political standpoint at that group too?

A. Yes.

Q. And there was a group leader for the studies, is that right, sir?

A. Yes.

Q. Now, Dr. Kury, you remained in school and completed your third year, is that right?

A. Yes.

Q. Were you in any way jealous of the fact that Dr. Kalman Berenyi was a top student in the class?

A. No, not at all.

Q. Where would you say you were with relation to the class of studies?

Mr. Sullivan. Objection, your Honor. He is not only trying to impeach his credibility, he is trying to degrade the witness.

The Court. You may answer.

A. I don't know exactly where I did stand. I had quite good marks, but I did not live in dormitory so I don't know the people in the dormitory. Publicly we were not graded. I really don't know where I did stand in the class comparing to Dr. Berenyi.

[fol. 55] Q. Now, sir, in your fourth year of studies—that started in September?

A. Yes.

Q. Of 1950?

A. 1949.

Q. 1949, sir?

A. Yes.

Q. Now in your fourth year did you complete your studies?

A. No, I did not complete.

Q. But you entered the school?

A. Yes.

Q. Now, Dr. Berenyi, Kalman Berenyi, was he a member of any of your particular classes?

A. Yes. Medical classes.

Q. Did he belong to any of the study groups with you?

A. I don't know. We did not belong to the same group any more.

Q. And were there many study groups?

A. Well, I dropped out from the study groups previously, so I did not belong to it in 1949.

Q. Is it your testimony, sir, that you were permitted to drop out at will from the study groups?

A. No. I was forced to leave the study group.

Q. Who forced you?

A. Well, I don't know exactly when at the meeting. It was several months after September, 1948. I was told that I am hostile to the Party, and they dropped me out of the group, but later on if I will show good behavior, I can join again.

The Court. Just a moment. Read the answer.

(Answer read.)

Q. Isn't it a fact, Doctor, the membership of the study group was obligatory to all regardless of political opinion?

A. I mean, no, it was obligatory. When I joined, it was voluntary.

Q. Well, sir, in the third year, in September, 1948, was it obligatory?

A. No.

Q. You didn't have to go to the study groups?

A. No.

Q. Is it your testimony only pro-Communists or Communists went to these study groups?

A. No. There were several other people.

[fol. 56] Q. Non-Communists?

A. Mixed up, yes.

Q. Were you then an active anti-Communist?

A. No. I did not like to show it.

Q. But still you were told to drop out because they had no love for you.

A. I spoke to somebody else outside of the study group, I think in a streetcar, and I made unwisely some remarks which I told back to somebody else.

Q. Were you expelled from the school?

A. No.

Q. And you were permitted to remain in a Communist controlled school?

A. Yes.

Q. Now, Doctor, how long did you remain in your fourth year?

A. I remained there till December, 1949.

Q. Would that be about three months?

A. It would be starting about in middle of September and October and November.

Q. About three or three and a half months, is that right?

A. Yes.

The Court. Until December what year?

The Witness. December, 1949.

The Court. 1949?

The Witness. Yes.

Q. What happened to you sir?

A. Well, I tried to leave Hungary without passport and I was arrested at the Austria-Hungary border and I spent about 12 months in jail.

Q. That was a political crime, is that right?

A. Well, it was thought to be a political crime.

Q. Because of your trying to escape from Hungary?

A. Without passport.

Q. Permission of the Government, if you will?

A. Yes.

Q. And were you considered then expelled from the school?

A. Well, no. I was not expelled. I never told to the school that I was arrested. The police did not send my record to the university.

Q. Are you sure that the Government was not apprised of the fact that you attempted to escape and leave Hungary [fol. 57] at all? That the Government did not know it?

A. Well, the police knew it, yes, but there were so many people then, obviously escapes, they did not notify the university.

Q. Doctor, sir, do you want me to understand and this Court to understand that when you were arrested, you didn't divulge the fact that you were a medical student and you didn't answer those questions?

A. Yes. I answered. I told them I was a medical student.

The Court. That you were a what?

The Witness. I said that I was a medical student. I had to give to the police all my data.

Q. And they knew that you had attended the Budapest Medical School?

A. Yes.

Q. And is it my understanding, sir, that your testimony is they never notified the Budapest Medical School that you were attempting to politically escape from Hungary?

A. No. They did not notify.

Q. Is that what you want me to understand?

A. Yes.

Q. Now you spent some 12 months in jail?

A. Yes.

Q. And then what happened to you? Did you return to medical school?

A. Yes, I returned.

Q. Well, when did you return to medical school?

A. I returned first in 1951.

Q. Did you start doing the work again that you had missed when you left school in December of 1949?

A. Yes. They asked me, "where have you been for a year?" And I answered, "I have been sick."

I presented a false medical certificate that I had some lung disease and I had to stay at home. But I don't want to specify it any further. The person who gave it to me is still alive and still in Hungary.

Q. And is that man related to either of the Doctors Berenyi?

A. No.

Q. Now, Doctor, when you came back to school, they didn't know anything of your political past and your hav-
[fol. 58] ing gone to jail?

A. Well, they did not know anything that I have been in jail.

Q. And you were readily admitted back to school?

A. Well, it took several weeks, but I was admitted back.

Q. And there was no deal made by you with the school and no understanding had by you?

A. No.

Q. Had by you with the school concerning your return to the school?

A. No deal made. Act that I have been sick.

Q. And this despite the fact that it was known then that you were anti-Communist and certainly not a member of the Communist Party, is that right?

A. Yes.

Q. Now, Dr. Kury, when you returned to medical school in 1951—

A. Yes.

Q. —is that in September?

A. No, it was later. It was earlier. I am sorry.

Q. February?

A. Yes, January or February.

Q. By that time Dr. Kalman Berenyi had gone ahead of you in class?

A. Yes.

Q. You no longer attended the same classes with him?

A. No.

Q. Would I be correct in saying that whatever relationship that you had with Dr. Kalman Berenyi before that time was even less now?

A. Yes.

Q. He was an upper classman?

A. Yes.

Q. And did you continue in school in February of 1951 as a fourth year man?

A. I continued, yes, but I became sick really, and I had to go, was admitted to the Internal Medicine Clinic. It was in Budapest.

Q. When was that, sir?

A. This was in 1951. I became sick around in March.

Q. And by that time what year were you a student of? In what year were you?

A. I was in the fourth year.

Q. Now you returned to the fourth year, you say, in February?

A. January.

Q. In the next month you were ill?

A. I was going until about March.

[fol. 59] Q. About a month or two?

A. Yes.

Q. And you became ill?

A. Yes.

Q. And how long did you remove yourself from school?

A. Well, I became ill several months and I joined the university. I did in September of this year, of 1951 I attended the school for a short time and I became ill again, and I was forced to go to the hospital. So I dropped out from the school too.

Q. Well, Dr. Kury, am I correct in saying that all during this time your relationship, if any, with Dr. Kalman Berenyi was even more and more distant?

A. Yes.

Q. And certainly your relationship with Dr. Magdalena Berenyi was still further distant?

A. Well, yes.

Q. You had no relationships with her at all, is that right?

A. Yes.

Q. And do you know when they graduated from medical school, referring to the two petitioners in this case?

A. 1952.

Q. They graduated with their regular class?

A. Yes.

Q. Now when did you graduate from medical school?

A. 1954, two years later.

Q. Now thus would I be correct in saying with a year's absence in prison, absence due to illness, you lost two years' time?

A. Yes.

Q. Now, Doctor, did you have any dealings with Dr. Berenyi, Kalman Berenyi, after you graduated from medical school?

A. No. I saw him occasionally on the street, and I think on the university grounds or in the hospital. I did not have any further relation with him.

Q. Did you have any talks with him?

A. No.

Q. How about Dr. Magdalena Berenyi?

A. Magdalena Berenyi I saw occasionally too at the university and—

Q. Did you have any talks with her?

A. No.

Q. Political or otherwise?

A. No.

Q. Now, Dr. Kury, prior to your graduation from college in 1954 did you have any talk with either of the two [fol. 60] Dr. Berenyis after they had graduated in 1952 and your graduation in 1954?

A. No. I just saw them occasionally. We greeted each other and that was it.

Q. Now, Dr. Kury, subsequent to your graduation in 1954, were you admitted to practice medicine?

A. Yes.

Q. In Budapest?

A. Yes, I was. I did not practice medicine after my graduation in Hungary right away. I was away for about one and a half years, and I returned to Budapest in August, 1956.

Q. Now when was the revolution or the attempted overthrow of the Communist Party?

A. That was in 1956.

Q. When?

A. In October.

Q. And was that the time to your knowledge that Dr. Kalman Berenyi and Magdalena Berenyi escaped from Hungary?

A. I don't know when they escaped.

Q. When did you escape?

A. I tried it several times and I made it finally in January, 1957.

Q. Well, sir, between the time of the revolution when the people of Hungary attempted to overthrow Communism in 1956—is that the date? In 1956?

A. Yes.

Q. Until the time that you escaped, did you see either of the Doctors Berenyi?

A. No.

Q. Had you heard that they had escaped?

A. No.

Q. You didn't know anything?

A. No.

Q. Well, from the time you graduated from medical school did they in any way to your knowledge participate in any political activity of any kind, nature or description?

A. Well, I lost complete sight of them. I even did not ask anything what they are doing.

Q. Now did you make a record of any other names of any persons who you thought to be Communists, of anybody that you believed to be Communists?

A. Make a list?

Q. Yes.

A. Yes. I made occasional notes but I did not take—I made occasional notes but I really did not bring them here.

Q. Well, when was this note made, this occasional note made?

A. Well, in 1955 but it was somebody else.

[fol. 61] Q. Other people. Did you list either of the two Doctors?

A. I did not list regular Party members.

Q. Did you list either of the two Doctor Berenyis?

A. I know I even did not think about it.

Mr. Spar. Your Honor pleases, at this time I have some further questions to ask of this witness relating to prior testimony. May I suggest, if the Court please—

The Court. How much longer do you have?

Mr. Spar. I would say 20 minutes.

The Court. Twenty minutes more?

Mr. Spar. Yes, sir.

The Court: We will recess until ten minutes after two.

(Noon recess.)

Afternoon Session

GYORGY KURY, resumed.

Cross examination.

By Mr. Spar (continued):

Q. Dr. Kury, are you aware of the fact, sir, that Dr. Kalman Berenyi entered the army service while a student at the medical university?

A. Yes.

Q. And is it equally true—

The Court. At what university?

Mr. Spar. At the medical university, sir.

Q. And is that equally true with relation to the petitioner Dr. Magdalena Berenyi?

A. Yes.

Q. Now is it a fact, sir, that they were in the Medical Corps of the Hungarian Army?

A. Yes.

[fol. 62] Q. Now, Dr. Kury, is it also a fact, sir, that joining the Medical Corps of the Hungarian Army did not necessarily mean that you were a Communist?

A. Yes.

Q. Thus, non-Communists were in the army as officers?

A. Yes.

The Court. When did this happen? When did Dr. Kalman Berenyi and Dr. Magdalena Berenyi become members of the Hungarian Army in the Medical Corps? When?

Q. Doctor, do you know the date?

A. I don't recall the exact date. I think they were students yet.

The Court. They were still students?

The Witness. Yes.

Q. During their senior year of 1951-1952 they were in the army?

A. As I said, I don't recall exact time.

Q. But you do state though to your knowledge it was not necessary to be a Communist to be in the army?

A. Yes.

Q. And to be an officer in the medical corps?

A. Yes.

Q. And to your knowledge were the duties of the medical corps officers strictly limited to treating the patients, soldiers, sailors and civilians?

A. Seemed dependent on your assignment, but most of the cases this was true.

Q. And is it a fact, sir, that while in the medical corps of the army the officer also attended school, medical school?

A. You mean—yes. There were many colleges.

Q. We are referring now, sir, to the Budapest Medical College, the one that you attended?

A. Yes.

Q. Isn't it a fact, Dr. Kury, that many persons, such as Dr. Kalman Berenyi and Dr. Magdalena Berenyi joined the armed forces of Hungary as medical officers in order to have their medical education paid for, if you know?

Mr. Sullivan. Objection, your Honor. Calls for a conclusion.

[fol. 63] The Court. If he knows that that was the purpose. Do you know whether or not that was the purpose of these two individuals?

The Witness. I have no idea. Certainly true that is a paid part of your education, college, but I don't know.

Q. When you say they paid part of the education, you are referring to the army?

A. The army, yes.

Q. Paid part of the education for a student?

A. Yes.

Q. Now is it a fact, Dr. Kury, that after the two Doctors Berenyi graduated from medical school in 1952 they continued in the army service for a period of time?

A. Yes.

Q. And that was still only in the medical corps?

A. Yes.

Q. And they served in the Budapest area?

A. I really don't know. I saw them in Budapest, but I don't know whether they were stationed there or not.

Q. Now is it a fact that a person who is even an anti-Communist could be a medical corps officer in the Hungarian Army?

A. Well, if he doesn't express his view and nobody knows about him, then everything is possible.

Q. Then it is possible?

A. Well—

The Court. Well, he answered the question.

Mr. Spar. I am sorry.

Q. Now, Dr. Kury, relating to Dr. Magdalena Berenyi, the female petitioner, was she ever to your knowledge a member of the university Communist Party while a student at the university?

A. Well—

Q. Yes or no?

A. I have heard indirectly from somebody else.

Mr. Spar. Yes or no. Your Honor, may I ask—the question as to his knowledge, it is either a yes or a no.

The Court. Do you know or don't you know?

[fol. 64] The Witness. Well, I heard. I did not hear directly like in the case of Kalman, but—

The Court. I say—perhaps it is a conclusion that you are asking for nevertheless. Isn't it?

Mr. Spar. As to his knowledge only sir. As to his personal knowledge.

The Court. Do you have any personal knowledge of whether or not Dr. Magdalena Berenyi was a member of the Communist Party?

The Witness. I have some indirect knowledge, yes, but it is indirect.

Q. Do you have any personal knowledge of your own accord, sir?

A. I don't have any personal knowledge.

Q. And you never saw her attend any meetings?

A. Well, I did not go to meetings, any of this kind.

Q. And she certainly never told you anything?

A. No.

Q. And you never heard her say anything that was in favor of the Communist Party?

A. No.

Q. Now, Dr. Kury, I would like to clear one thing up, sir, about these classes that you referred to, that you said Dr. Kalman Berenyi attended; and on the first occasion in 1948 he is alleged to have made the statement that he was a Party member?

A. Yes.

Q. And that he was in charge of ideological information and education?

A. Yes.

Q. Is it a fact, sir, that in 1948 part of the curriculum of your school, the medical school, sir, was ideological information and education concerning Communism as part of your medical classes?

A. In 1948 I don't think it was. It became later. When I graduated in 1953 and 1954, certainly Marxism, Leninism was an obligatory subject. Everybody had to have examinations, but in 1948 it was not.

Q. You are saying now that you know that it wasn't or you say now that you are not sure of it?

A. I am sure it was not obligatory.

[fol. 65] Q. And at that time the Communists were already in power and in control of the Government of Hungary?

A. More or less. Well, I don't know officially. I don't remember. But unofficially they were controlling the country.

Q. When was the revolution when the Communists took over if you know?

A. This was later on in the next year, 1949.

Q. Were they already in power and control?

A. Was not a revolution. It was—actually, this is a slow process by discarding all the opposition parties.

Q. Now, Dr. Kury, isn't it a fact that you were then a third year student in 1948, is that right, sir?

A. Yes.

The Court. Let's not cover the same ground. Let's move along.

Q. And isn't it a fact, sir, that in 1948, in September, when you entered your third year, they already had these study groups?

A. Yes, they had them.

Q. And isn't it a fact that one of these subjects that you studied in class was politics?

A. Well, we discussed it, yes.

Q. In class?

A. Well, not in medical class. Only during the time of these meetings.

Q. Didn't you have a class of politics?

A. At the time, no.

Q. Was it obligatory?

A. No. Not in 1948.

Q. You are sure of that, sir?

A. Well, at least I did not join. To my knowledge was not obligatory.

Mr. Spar. No further questions.

Mr. Sullivan. No further questions.

The Court. You are excused. Both parties are through with you. You may leave. He wants to know if he is excused. I said Yes, that he is excused and he may go. He may go anywhere he pleases.

Mr. Spar. Yes, your Honor.

[fol. 66] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Sullivan. Your Honor, the Government has no further witnesses.

The Court. The Government rests?

Mr. Sullivan. Beg your pardon.

The Court. The Government rests? Just a moment. Don't talk to each other please. Does the Government rest?

Mr. Sullivan. Well, first, I would like to say, your Honor, that the preliminary examination is included, the Government's case record of the preliminary examination, as part of the Government's case. And as part of this preliminary examination, which is submitted in evidence, is an application for a petition of naturalization, wherein a question is asked: have you ever been a member of the Communist Party? Have you ever been associated with Communists? Have you ever taught or advocated Communism?

The answer was No by the petitioners.

The Court. You are calling the Court's attention to that. Are you calling my attention to that?

Mr. Sullivan. It is in the application, your Honor.

The Court. I say: are you calling my attention to that?

Mr. Sullivan. That is right.

The Court. Are these the applications that I have before me? Take a look.

Mr. Sullivan. That is the petition.

The Court. The petitions, rather. Come up here and look at them. Are you showing me, Mr. Sullivan, the original petitions?

Mr. Sullivan. I believe you have the original petition. These are the original applications.

The Court. You haven't given me an opportunity to ask my question: you just handed the Clerk and the Clerk has [fol. 67] just handed to me a number of sheets of paper, but you did not state what they are. Now will you tell me what they are for the Record?

Mr. Sullivan. Excuse me, your Honor, Government Exhibit 1-D in the case of Kalman John Berenyi—

The Court. You call it Government Exhibit 1-D, but I haven't marked it. I haven't had it marked as an exhibit. You mean it is marked as an exhibit? Where? In connection with what hearing?

Mr. Sullivan. The case of Kalman John Berenyi.

The Court. Not the case that is being tried before me. It may have been marked as an exhibit perhaps at some other hearing.

Mr. Sullivan. The case being tried here, your Honor.

The Court. Is that one of the papers that was admitted in evidence at the very beginning?

The Clerk. Yes.

The Court. I see. What do you want me to do?

Mr. Sullivan. I call your Honor's attention to question number eight.

The Court. I have read it. Any other question?

Mr. Sullivan. The case of Magdalena Berenyi.

The Court. That is Exhibit 2-D. I have read it.

Mr. Sullivan. Your Honor, prior to and subsequent to the filing of the petition both Kalman John Berenyi and

Magdalena Berenyi have consistently testified that they have never been members of the Communist Party.

The Court. Are you now arguing the case?

Mr. Sullivan. Excuse me.

The Court. Are you arguing?

Mr. Sullivan. I am sorry, your Honor. That is what I just showed you. Just trying to emphasize—

[fol. 68] The Court. Is there any further evidence?

Mr. Sullivan. The Government rests, your Honor.

Mr. Spar. If your Honor pleases, I had wanted to say, before the Government had rested—

The Court. You may say it now.

Mr. Spar. Yes, sir. That I wanted the opportunity of recalling one of the Government's witnesses for no more than five minutes.

The Court. You did not indicate.

Mr. Spar. You asked me not to butt in, sir.

The Court. Oh, no.

Mr. Spar. He is here in court.

The Court. Is he?

Mr. Spar. Yes, sir.

The Court. Call him then. I thought you were calling for someone who had already gone.

Mr. Spar. No, sir. He is here. Dr. Halasz. May I ask that my partner take this short examination.

The Court. All right. Is this part of your case?

Mr. Spar. No, sir. Part of the cross-examination, sir. I had left out one or two questions.

The Court. The Government is permitted to reopen its case. You may withdraw your statement that you rested, Mr. Sullivan.

PAL HALASZ, recalled.

Cross examination.

By Mr. Sanetsky:

Q. Dr. Halasz, are you familiar with the setup of the study groups that were known as the Tanulokor?

A. Yes.

Q. And did you hear Dr. Kury testify with respect to those study groups?

A. Yes.

[fol. 69] Q. Did you hear him say, sir, that attendance at these study groups was not compulsory or obligatory? Did you hear him say that?

A. Yes. I heard him say that.

Q. Was that an accurate statement?

A. Well, it might have been and he was accurate, when he started the medical school. But when I started the medical school, it was obligatory to be there. We were divided into groups, but I don't know how many and we had to attend that group. And that was made to ease up the study for us.

Q. Is it a fact that the formation of these groups was in essence for the purpose of assembling a smaller group of students with respect to study and discussion rather than the classes at large which consisted of 500 or 600 persons in the formal classes?

A. Yes.

Q. And during the discussions at these study groups were political discussions ever held?

A. Well, there were political discussions held when we had the political order, which was actually a part of our curriculum. The other times we were discussing medical subjects.

Q. In other words, when you discussed political topics, it was a smaller study group with reference to the main course that was part of the curriculum in political ideology?

A. Yes. At the time I started the school we didn't have that yet. They were saying, well, do it possibly on the second year, I believe. So we started on the third year. We started with the obligatory political curriculums.

Q. And you discussed this subject in your study groups as well as medical topics?

A. That is right.

Q. And it was the medical subjects that were the primary concern of these study groups rather than political topics, is that correct?

A. Well, during that political study was just as much important than the medical because we had to take examination.

Q. In both political subjects and medical subjects?

A. Both political and medical subjects.

Q. Doctor, am I correct in stating that your present recollection is that on perhaps the two, three or four occasions [fol. 70] when you saw Kalman Berenyi at Communist Party meetings, you presently do not recall whether these were open or closed meetings, is that correct?

A. I presently can't recall.

Q. As a matter of fact, Doctor, even if they were closed meetings, is it your recollection that there were on occasions non-Communists present who were there as invited guests?

A. Well, I don't know that.

The Court. These questions are repetitious. These same questions were asked before. I will not allow repetition of questions that have already been asked. This witness was recalled for some specific purpose not for the purpose of repeating matters already testified to.

Mr. Sanetsky. Excuse me, your Honor, one moment. Thank you, Doctor, no further questions.

The Court. Are there any questions?

Mr. Sullivan. Excuse me. I would just like to ask you one question: were you at the University of Budapest Medical School in the year 1948?

The Witness. No.

Mr. Sullivan. No more questions.

The Court. Now is there any objection to excusing this witness?

Mr. Sullivan. The Government is all through with him.

The Court. Mr. Spar?

Mr. Spar. None, sir.

The Court. You are excused. Now does the Government rest? Does the Government now rest?

Mr. Sullivan. Government rests, your Honor.

Motion for Admission to Citizenship and Ruling Thereon

Mr. Spar. If your Honor pleases, at this time on behalf of the petitioner Magdalena Berenyi I respectfully move her admission to citizenship in the United States.

[fol. 71] The Court. You are premature. I want the hearing completed.

Mr. Spar. Right, sir.

The Court. And I have not had an opportunity to read the transcript which is in evidence.

Mr. Spar. Your Honor, on that score, sir, may I respectfully call to your Honor's attention a case decided by the Court of Appeals for the Seventh Circuit in 1950. That was the application of Murra.

The Court. What is the purpose? What is the holding in the case?

Mr. Spar. The holding of the case is this, sir: where the petitioners requested a hearing before the court, it is not for the purpose of reviewing the recommendations of the examiner but it is rather a hearing de novo. The court must decide the issues upon the testimony which adheres and neither the testimony heard by the examiner, his findings or his recommendations are of any consequence.

The Court. Your motion is premature. I will not act on it.

Mr. Spar. I wish to merely set forth this case to your Honor anyway for the purposes of the Record.

The Court. Have you the citation?

Mr. Spar. Be glad to give it to you, your Honor. 166 Federal 2d 605. And then decided again by the same Court of Appeals—

The Court. What is the name of the case?

Mr. Spar. In the matter of Murra.

Mr. Sullivan. Your Honor, excuse me. Your Honor, in the matter of Murra—

The Court. Wait until he gets through with it. What other citation is there?

Mr. Spar. 178 Federal 2d 670, decided by the court in 1950.

[fol. 72] The Court. Is the case in 178 a continuation of the case in 166?

Mr. Spar. It was on the second appeal, sir.

The Court. What year was 166 decided in?

Mr. Spar. The first one was 1948, sir. The second one 1950.

The Court. Thank you. Now what is it you wish to say?

Mr. Sullivan. The matter of a de novo hearing, your Honor, was pure dicta in that case. The matter decided in that case was that the district court was mandatory that they should submit—

The Court. I will leave you, Mr. Sullivan. We are still taking evidence. The evidentiary part of the case has not been closed. Mr. Spar has not rested and so your argument is premature. You may proceed.

Mr. Spar. At this time, if the Court please, with your Honor's permission, sir, may I call a witness, a member of the medical profession of the State of Pennsylvania out of turn so that she may be dismissed as quickly as possible.

ILONA RADITZ RING, sworn.

Direct examination.

By Mr. Spar:

Q. Dr. Ring, would you be good enough to keep your voice up so I can hear you over here. Where do you live, Doctor.

The Court. Let's have her full name.

Q. Your full name, madam?

A. Ilona Raditz Ring.

Q. Where do you live?

A. I live in Philadelphia, 1001 City Line Avenue, Philadelphia, Pennsylvania.

[fol. 73] Q. Dr. Ring, may I ask where you were born?

A. I was born in Hungary, Segled. This was a small city.

Q. Dr. Ring, forgive me for asking this: how old are you?

The Court. She is over 21, I take it.

Q. I wanted merely to establish that she is possibly a little older than the two petitioners. Are you?

A. I am, unfortunately. Forty one. Yes I am older, forty one.

Q. Dr. Ring, are you a duly licensed physician in the United States?

A. Yes, I am.

Q. In what state or states are you so licensed?

A. In Pennsylvania.

Q. Are you now connected or associated with any hospital in Pennsylvania?

A. Yes, I am. The Temple University Hospital in Philadelphia.

Q. Dr. Ring, I think we would do better if you would talk a little closer to the microphone.

The Court. In what capacity?

The Witness. I am resident physician in pathology.

Q. Dr. Ring, when and where did you graduate from medical school?

A. I graduated in 1950 in Budapest, Hungary.

Q. Was that from the school that is now known or was at one time known as the Budapest Medical University?

A. Yes. There is only one medical school.

Q. Now known or was formally known as the Budapest Medical University?

A. Yes.

Q. Now, Dr. Ring, after you graduated from that school, did you come to the United States at any time to live here?

A. Yes. I came here in 1958.

Q. And, Dr. Ring, have you served in any hospitals in the United States other than the Temple University Hospital?

[fol. 74] A. Yes, I did. In New York in the Saint Vincent's Hospital from 1958 to 1962, and in Boston from 1962 to 1964 in the Carney Hospital.

Q. In what capacity were you at Saint Vincent's in New York?

A. In Saint Vincent's I was in charge of the department of microbiology.

Q. And in the Carney Hospital?

A. In the Carney Hospital I was resident in pathology.

Q. Dr. Ring, are you married?

A. Yes, I am.

Q. And is your husband a member of the medical profession too?

A. Yes, he is.

Q. And is he admitted to practice medicine in the State of Pennsylvania?

A. Yes, he is.

Q. Now, Dr. Ring, do you personally know Doctors Kalman and Magdalena Berenyi?

A. I do, very well.

Q. Are you in any way related to either or both of them? Are you a relative?

A. No, I am not.

Q. When for the first time did you meet Dr. Kalman Berenyi? What year?

A. I think it was 1950, 1949 or 1950. I cannot tell you exactly when.

Q. Where?

The Court. Met whom?

Mr. Spar. Kalman.

The Witness. Both. I would say yes.

The Court. You met both about the same time?

The Witness. Yes, I think so. Either 1949 or 1950. I am not sure.

Q. And where did you meet them?

A. I can't tell you sure where, but it was somewhere at the university.

Q. When you refer to the university, you are referring to the University of Budapest Medical School?

A. Yes, I do.

Q. And at that time you were an under graduate?

A. Yes.

Q. And at that time both of the two petitioners for naturalization were both under graduates?

A. Yes.

[fol. 75] Q. And, as a matter of fact, you were senior to them as far as school work was concerned? You were ahead of them?

A. Yes, I was. Two years.

Q. Now, Dr. Ring, did you have occasion to see and to talk to Dr. Kalman Berenyi during the first year that you met him?

A. Yes.

Q. And did you go out with him and his present wife socially?

A. Yes.

Q. And did you have occasion to go to the home occupied by either or both of them?

A. Yes, I did.

Q. Do you know when they got married?

A. What?

Q. When did they get married if you know?

A. I think in 1952.

Q. Now you knew them two or three years by that time?

A. Yes, I did.

Q. Could you estimate in the first year that you knew them how often you would see either or both of the two doctors?

A. About monthly.

Q. Beg your pardon.

A. About monthly.

Q. Now was this social?

A. Yes.

Q. And did you have occasion to talk to either or both of the doctors about the political unrest and the political problems of Hungary?

A. Yes.

Q. Now, by the way, are you now or have you ever been a member of the Communist Party in the United States, in Hungary or any other place?

A. No, never. Nowhere.

Q. Dr. Ring, as a result of your conversations with Dr. Kalman Berenyi, did you form a conclusion as to whether he was politically a Communist or an anti-Communist?

Mr. Sullivan. Conclusion.

The Court. Did you object?

Mr. Sullivan. That is right, your Honor.

The Court. Sustained. The answer, if she gave one, is ordered stricken.

[fol. 76] Q. Now did you talk to Dr. Kalman Berenyi concerning politics?

A. Yes.

Q. Now this is during the first year that you knew him?

A. Yes.

Q. What were the nature of the conversations and state approximately when they took place?

A. I didn't understand.

Q. What were the nature of your conversations? What did he say to you? What did you say to him concerning the political situation in Hungary, the Communist Party, and the takeover of Hungary by the Communists?

A. It was always against Communism.

The Court. No. The question was what did he say?

The Witness: I cannot recall what he did say.

The Court. If you can't recall the exact words, can you recall the substance of what was said?

The Witness. Yes, that he was very much against the Communist regime.

Q. Did he ever tell you that he was a member of the Communist party?

A. No.

Q. Did he ever tell you that he was opposed to Communism?

A. Yes.

Q. Now will you tell us something about his conversations with you and yourself with him concerning politics?

A. Well, I don't think I can give you words, what was spoken, but when we got together—this was not just Dr. Kalman Berenyi and I but Magdalena and Kalman and my husband and me—and we were discussing politics. That was the main subject at that time in Hungary, and we were all four of us very much against the entire regime, and the only concern was how to get out from Hungary.

[fol. 77] Q. And did Dr. Kalman Berenyi say that to you?

A. Oh, yes. Very often.

Q. And did his wife or then his fiancee talk to you in the same vein?

A. Yes, very much so.

Q. Did you know Dr. Magdalena Berenyi's family?

A. Yes, I did.

Q. Who did you know?

A. I did know her brother.

Q. Did you know her mother?

A. I know her now, here in the United States.

Q. In Hungary did you know her sister?

A. No.

Q. Now, Dr. Ring, how often would you say you talked politics in the second year in 1950, the second year you knew the Doctors Berenyi?

A. I would say the same way, until we were in Hungary. We did speak on many occasions. We did meet and every occasion we did discuss politics and always in the same sense.

Q. How to leave the country?

A. How did I leave?

Q. And also how to leave the country?

A. Yes, very much so.

Q. Now, did Dr. Kalman Berenyi ever tell you that he had joined the Communist Party?

A. No.

Q. Did Dr. Kalman Berenyi ever sustain or attempt to defend the Communist takeover of Hungary?

A. No.

Q. Did Dr. Kalman Berenyi tell you why he wanted to leave Hungary?

A. Yes.

Q. What did he say?

A. He wanted to go to a place where there is freedom.

Q. Did he mention to you where he wanted to go?

A. First of all, he wanted to go out of the country. That is what we used to discuss, how to go out. And then we discussed where to go and, of course, the United States

came up. But this was so extremely far from Hungary at that time that it was just speaking about it.

Q. Did he tell you why he wanted to come here?

A. Yes. We did discuss that because we thought that here was that freedom which we really wanted all the time. [fol. 78] Q. Now, Dr. Ring, while you attended the medical university did you receive indoctrination from the school officials or through the school officials in Communism?

A. Not during my regular studies because I finished in 1950, and in my class it wasn't obligatory to go to Marxism-Leninism.

Q. That was the senior class at that time, is that right?

A. Yes.

Q. You were graduated when they took over?

A. Yes.

Q. What happened after that?

A. After that, it was obligatory to go to classes, Marxism-Leninism. It was a subject as any other subject, like internal medicine or any other medical subject.

Q. Dr. Ring, after you completed studies at the university, did you remain at the university?

A. Yes, I did.

Q. In what capacity?

A. First, as a so-called demonstrator. Here they would call it, I think, instructor and then assistant professor in the department of microbiology.

Q. And how long did you remain on the instructor or professorial staff of the university?

A. 1955.

Q. Now while, Doctor, the two Doctors Berenyi were students at the university were they in your classes?

A. No.

Q. Did you continue to see them socially?

A. Yes.

Q. And, Dr. Ring, did there come a time that you know of that the two Doctors Berenyi left Hungary?

A. Yes.

Q. Do you know under what circumstances?
A. Until I was in Hungary—

The Court. Doctor who are you asking her?
Mr. Spar. The two Doctors Berenyi, under what circumstances they left Hungary.

A. Well, I don't know exactly how they left. I knew they had to escape because everyone who left had to escape.
[fol. 79] Q. Was there a revolution or a fight at the time?
A. Yes.
Q. Against the Communists?
A. Yes.
Q. And was that when they left Hungary and escaped?
A. Yes. Yes.

The Court. What year?
The Witness. 1956.

Q. And were you able to escape?
A. Yes.
Q. When did you escape?
A. The same time. A little bit later. I heard while I was in Budapest that they already escaped, and we did. I don't know how much later but several weeks later I think we escaped.
Q. And you escaped and came to the United States?
A. Yes. First I was in Austria, Vienna.
Q. As a refugee?
A. Yes.
Q. Then you were brought to this country?
A. Yes.
Q. Dr. Ring, are you a citizen of the United States?
A. Yes, I am.
Q. And you are naturalized. Is your husband naturalized?
A. Yes, he is.
Q. Dr. Ring, since coming to the United States in 1956, did you have occasion to see and talk to the two petitioners for citizenship?
A. Yes, I did.

Q. Well, how often?

A. Until we were in New York. We have seen them six-eight times a year, but then when we came to Boston, then we have seen them very often.

Q. How often is "very often?"

A. I would say every two weeks. Sometimes even every week.

Q. And that would be an association of about four people: your husband, yourself, and the two Doctor Berenyis?

A. Yes.

Q. Did you have occasion to talk politics?

A. Yes, we did.

Q. To the two Doctor Berenyis?

A. Yes.

[fol. 80] Q. Could you tell us what was said?

A. Yes. We were always very happy to be here. First of all, not to be there and then to be here.

Q. When you say "not to be there"—

A. Not to be in Hungary and also to be here.

Q. And did Dr. Kalman Berenyi ever state anything about politics to you, his political beliefs?

A. Well, just that he was very happy to be here because here he feels the freedom we do feel here.

Q. Did he ever tell you that he was a member of the Communist Party?

A. No.

Q. And with reference to Dr. Magdalena Berenyi, what is your testimony?

A. I would say the same thing.

Q. Now, Dr. Ring, will you tell us whether or not Dr. Kalman Berenyi is well disposed to the good order and to the Constitution of the United States of America?

Mr. Sullivan. Objection, your Honor.

The Court. Sustained.

Mr. Spar. Your Honor pleases, that is one of the questions in the petition.

The Court. Sustained.
Mr. Spar. No further questions.
The Court. Any questions?

Cross examination.

By Mr. Sullivan:

Q. Doctor, did I understand you to say that you first met Dr. Kalman Berenyi and Magdalena Berenyi in the year 1949?

A. Either 1949 or 1950.

Q. So you did not know them in 1948?

A. I don't think so.

Q. Doctor, isn't it a fact that right after the uprising, the rebellion on October 23, a lot of Communists escaped from Hungary?

Mr. Spar. Objection to, your Honor.

[fol. 81] Q. Escaped from the freedom fighters as well as the Communists?

Mr. Spar. Objected to, if your Honor please.
The Court. Objection sustained.
Mr. Sullivan. No more questions.

KALMAN J. BERENYI, sworn.

Direct examination.

By Mr. Spar:

Q. Sir, would you state your full name and your home address, sir?

A. Dr. Kalman J. Berenyi, and I live at 130 Boylston Street, Chestnut Hill, Newton, Massachusetts.

Q. How long have you lived in the Commonwealth of Massachusetts?

A. Six years since, well, this is the sixth year. I came to this state July 1st of 1959.

Q. Prior to that date where did you live?

A. Prior to that I lived in New Jersey.

Q. And for how long did you live in the State of New Jersey?

A. In the State of New Jersey I lived from July 1st, 1958—I am sorry—from March, just about March, 1958, until I left New Jersey, coming to Massachusetts, which was June 30, 1959.

Q. Dr. Berenyi, are you now or have you ever been a member of the Communist Party of Hungary, of the United States or of any other country?

A. I am not and I never was a member of the Communist Party.

Q. Have you ever, sir, at any time and place advocated or taught Communism?

A. No, I have never. I am sorry. I have never done that.

Q. Have you at any time promoted the cause of Communism?

A. No.

Q. Have you at any time in your lifetime, sir, ever been a member of an association, voluntarily a member of any [fol. 82] association that advocated or taught Communism?

A. No. I never have been.

Q. Dr. Berenyi, when and where were you born?

A. I was born in Budapest, Hungary, August 7, 1928.

Q. Sir, for the Record would you state whether you were ever baptized?

A. Yes.

Q. In what religion?

A. Roman Catholic.

Q. Are you now a practicing Roman Catholic?

A. Yes.

Q. Dr. Berenyi, there has been testimony here that you are alleged to have stated that in 1945 you became a mem-

ber of the Communist Party. Did you hear Dr. Kury so state it?

A. Yes, I did hear it.

Q. Did you ever at any time, either directly or indirectly, make such a statement to Dr. Kury, to any group of people or to anyone else?

A. No, I didn't make a statement like that.

Q. At any time?

A. No.

Q. Dr. Berenyi, Dr. Kury testified that you allegedly had stated that in 1945 you had joined the Communist Party. Is it a fact, Doctor, that in 1945 you joined the Communist Party?

A. No. I did not join the Communist Party at that time.

Q. In 1945 where were you and what were you doing?

A. In 1945 I lived with my parents in Budapest when the Soviet troops came in, and I was in high school.

Q. And how old were you?

A. Sixteen years old.

Q. And were you politically active at all when you were 16 years of age?

A. No, I was not.

Q. Could you tell us what else you were doing in addition to going to high school, religiously?

A. Religiously, I was very strictly religious person. I was brought up in that manner by my mother, and I have gone to the order of St. Franciscan Nuns. This was a Nun order where I was an altar boy until 1948. I was an altar boy in that particular order of nuns until the year of 1947.

[fol. 83] Q. 1947?

A. Yes.

Q. And when did you start as an altar boy?

A. I did start it, I think it was 1941.

Q. And would you say, therefore, that for a period of six years or so you were active in your religious persuasion as an altar boy?

A. Yes.

Q. And that was before the Communists took over in Hungary?

A. That is correct.

Q. Now, Dr. Berenyi, when did you enter medical school?

A. I entered medical school in 1946, September, I think.

Q. Just for the Record, it has a long Hungarian name, but would I be right in saying we will call it the Budapest Medical School?

A. Yes. You are right.

Q. Now did you know at that time Magdalena Berenyi, your present wife?

A. In 1946 I did not know her.

Q. When did you first meet her?

A. 1948.

Q. Now, sir, would I be correct in saying that you already had attended two years in college before you had met the lady who you subsequently married?

A. This was actually the second year of the college. That was the spring of 1948.

Q. Be a year and a half later?

A. Yes.

Q. Now, Dr. Berenyi, when you entered medical college in 1946 was the school then dominated, operated or run by the Communist Party?

A. No, it was not.

Q. And were there any Communist groups or organizations then within the medical school?

A. There was.

Q. Did you join any?

A. No, I did not.

Q. Now did you join any groups?

A. No.

Q. Did you join a student body group?

A. Yes, I did, the student body group which was called Mefesz at that time, which is an abbreviation of Hungarian University Students Organization, which actually became defunct, as I recall, in 1948 or 1949.

[fol. 84] Q. And would you say that for three or three and a half years you were a member of the Mefesz organization?

A. That is correct.

Q. Now, Doctor, to digress for a moment, Mr. Sullivan has offered into evidence Government Exhibit 1-D, your application for naturalization, form N-400. I ask you whether or not your signature appears thereon and also whether or not there is attached to such application a supplemental affidavit and whether your signature appears on the supplemental affidavit?

A. Yes. Here is my signature.

Q. And I ask you on the form N-400, which is also part of the Government Exhibit, whether your signature appears thereon?

A. Yes, it does.

Q. Now, Dr. Berenyi, I read to you from this exhibit as follows—

The Court. Will you identify the exhibit again by number?

Mr. Spar. Yes, sir. It is Exhibit 1-D in evidence today, sir.

The Court. Thank you.

Question 8: Have you ever, in the United States or in any other place, been a member of, in any other way connected with, or associated with the Communist Party—

Were you asked that question? Did you see that question?

A. Yes, I did.

Q. And what was your answer?

A. I said I was not.

Q. And was that answer true or false?

A. Yes, it was true.

Q. True or false?

A. It was true.

Q. And part of the same question:—either directly, or indirectly through another organization, group, or person . . . been a member of the Communist Party?

[fol. 85] Did you answer No to that question?

A. Yes, I did.

Q. And was that true or false?

A. It was true.

Q. Now, Doctor, in connection with the same petition and attached to the same application did you make the following statements:

"I, Kalman John Berenyi, on oath depose and say that I never at any time during my life, either in this country, the United States, or any other country have I ever been a member of the Communist Party or any affiliate thereof."

Did you make that statement?

A. Yes, I did.

Q. Was that statement true or false?

A. It was true.

Q. Is it true?

A. It is the truth.

"During my term in medical school, Budapest, Hungary, I did belong to the Magyar Egyetemistak Foiskola-Sok Szervezete (Hungarian University Student Organization)."

Is that the truth?

A. Yes.

Q. And did you so state it?

A. Yes, I did.

"This organization sponsored sport activities."

The Court. Five-minute recess.

(Recess).

Q. Continuing for the Stenographer, sir, the reading of the memorandum, the statement attached to Government Exhibit 1-D in evidence:

"This organization sponsored sports activities, excursions to mountains, etc."

Was that true about Mefesz?

A. Yes.

"The organization was dissolved about 1948 or 1949."

[fol. 86] Is that accurate?

A. Yes.

"While I was a medical student a doctor in the Hungarian Army (1949 to 1956) I was approached by representatives of the Communist Party assigned to my unit to join the Party."

Was that true?

A. Yes, it was.

Q. And is it true?

A. Yes.

"They impressed on me that it would be an honor to join the Party and I would obtain greater benefits."

Did that actually happen?

A. Yes, they did.

Q. And is that true?

A. Yes, it is.

"and I would obtain a much better job."

Is that true?

A. Yes.

Q. Did they tell you that?

A. Yes.

"and a better location, etc."

Were you promised that?

A. Yes.

"However, I never did join the Party and neither did I ever attend any closed Party meetings."

Did you make that statement?

A. Yes, I did.

Q. And was the statement true?

A. It was true.

Q. Was it true when you made it on the 19th of February, 1962, and true today?

A. Yes, it is true.

"I still have my parents living in Budapest, Hungary. We correspond very frequently."

Is that true?

A. Yes.

"I want it definitely understood that I have no use whatever for the Communist Party."

[fol. 87] Did you make that statement under oath to the Examiner—General Attorney of the Nationality section, Mr. Sullivan, on February 19, 1962?

A. Yes, I did.

Q. And was that part of your application for citizenship?

A. Yes.

Q. Now, Dr. Berenyi, is it a fact, sir, that you did attend meetings while you were an undergraduate student?

A. Yes.

Q. What kind of meetings were they?

A. They were meetings around 1948 when the Communists took over whereby Communists tried to indoctrinate the groups of students to change their minds about basic things of government and the way of living in Hungary.

Q. Were these Communist Party meetings or were they open meetings where the students were required to attend?

A. Ones that I attended, they were open meetings.

Q. Did you ever attend a closed meeting of the Communist Party?

A. No, I did not.

Q. And at these open meetings were there other non-Communists present?

A. Yes.

Q. What was said at these meetings?

A. Different things. These meetings were called upon for various reasons: if anything major happened in the international politics—I remember clearly, for instance, when the Korean War broke out, there was a large meeting which was obviously organized by the Communists and everybody attended it.

Q. You attended it too?

A. Oh, yes, I had to.

Q. Was it obligatory or voluntary on your part?

A. Well, just as we heard it previously, it was called in quotation marks voluntary, but if you didn't attend it, you could have seen very serious consequences of it.

Q. And thus you would say it was not voluntary?

A. No. Basically it was not.

Q. Now did you at any time participate by word of mouth or any action in any of these meetings?

A. No, no.

[fol. 88] Q. Did you speak at all?

A. Occasionally it happened that one of the leaders or lecturers in these meetings pointed out certain persons and asked them questions such as, "Do you think that our country is great for the workers?" And obviously you had to answer, like, just nodding Yes and things like that. But I did not actively participate in these meetings.

Q. Well, if any answers were given, were they given on a voluntary basis?

A. Well, the same so-called voluntary basis that nobody dared to withhold any answers.

Q. Now, Dr. Berenyi, in all how many open meetings would you say you attended while you were an undergraudate student?

A. I don't know. I am sure—I think I attended quite a few.

Q. About how many?

A. Well, almost, I would say once a month at least they had meetings like that.

Q. And were other students present?

A. Oh, yes.

Q. And students whom you knew to be anti-Communists?

A. Definitely.

Q. And they came just as you did, is that right?

A. Yes.

Q. Now attending these meetings didn't make you a Communist, did it?

A. No.

Q. And did you ever sign a pledge to become a Communist?

A. No.

Q. Did you ever obtain a Communist card?

A. I never did.

Q. Did you ever pay dues to the Communist Party?

A. No.

Q. Or any of its affiliate organizations?

A. No.

Q. At any time?

A. No.

Q. Do you know whether or not you were ever on the rolls of the Communist Party as a member thereof?

A. No.

Q. Did you ever make a statement that you were a leader in the cell or group of a Communist Party?

A. No.

Q. Were you ever a leader of a Communist Party?

A. I was never a leader of a Communist group, no.

[fol. 89] Q. Were you ever a participant in a Communist Party group?

A. No.

Q. At any time?

A. No.

Q. Now that was all during your undergraduate years as a student at the university?

A. Yes.

Q. Now, Doctor, did there come a time that you joined the army?

A. Yes.

Q. Now when did you join the army?

A. In 1949.

Q. At that time what were your feelings toward Communism?

A. I didn't like it at all. I was opposed to it.

Q. Have your feelings ever changed?

A. No.

Q. And your feelings before 1949, how were they?

A. Just the same.

Q. Now, Doctor, when you had joined the army, were you then still a student?

A. Yes.

Q. Now do you know the reason for joining the army?

A. I would say there were two reasons for it: one reason was that I was more or less ordered to join the army. In the university they told me that the army, which was then reorganized under Communist rule, needed physicians, and they sort of made me understand that I better join the army. This was the essence.

Q. Did many other undergraduate students at the medical school join the army?

A. Oh, yes, quite a few.

Q. As a result of that, were you placed in uniform?

A. Yes.

Q. And under military discipline?

A. That is correct.

Q. Was it necessary to be a member of the Communist Party to be in the armed forces?

A. It was not.

Q. Now while you were in the army did you continue for the next few years going to medical school?

A. Yes.

The Court. I don't think he has completed his answer to the question that you put to him, namely, what were his reasons for joining the army. He said there were two reasons. He named one. What was the second reason?

[fol. 90] The Witness. The second reason was that they made me also understand that during these years I would join the army—they called it the Army College of Medical Students—I would have my free board and some very little amount of money for books. And since I didn't know any other ways of obtaining this help to finish my medical education, this was another reason to join the Army College of Medical Students.

Q. Well, as a matter of fact, you got free tuition?

A. Yes.

Q. Were your parents able to support you through medical school?

A. No, they were not.

Q. Now, Dr. Berenyi, while you served a combined role in the army did you go serving in the active front or doing any fighting for the Communist Government as a member of the army?

A. No.

Q. Where did you serve as an army officer?

A. I served in several locations in Hungary. I was transferred from time to time when I got my rank in the army after graduating from medical school, and I kept asking for a placement to at least an army hospital in order to do some medical work, and I was always denied that. And I was kept in far away places in Hungary. Six months every year I spent in camps which were under very severe conditions. We were always in tents, far away from any kind of civilization.

Q. Well, while in these tents in these far away places were you there as a medical officer?

A. Yes. I took care of the sick calls. Always as a medical officer.

The Court. What was the highest rank that you attained?

The Witness. In 1956 I was promoted to captain.

The Court. Is the rank of captain substantially the same rank as the rank of captain in the United States Army? Do you happen to know?

[fol. 91] The Witness. Well, I would say so. I am not positive about it. I have never served in the United States Army. There was an automatic ranking list. If you were graduated as a first lieutenant, after three years, if you didn't have any disciplinary measures, you were automatically promoted to a rank higher, and that was in my case captain.

The Court. The first officer rank was first lieutenant not second lieutenant?

The Witness. No. First lieutenant.

The Court. What was the grade after that?

The Witness. Captain.

Q. Dr. Berenyi, is it a fact, sir, that after you left the school as a graduate in 1952, you continued service in the army for about four years, is that right?

A. That is right.

Q. Now, Doctor, with reference to your wife, Magdalena, when did you meet her for the first time?

A. That was the spring of 1948. I was introduced to her by a friend.

Q. When would you say you started to keep steady company with the lady?

A. I would say at the end of 1949, early 1950. That winter.

Q. And is it a fact, sir, that you were married to each other on June 7, 1942, in Budapest, Hungary?

A. That is correct.

Q. And, of course, you are not divorced and you live with your wife here in Massachusetts?

A. That is right.

The Court. When did you marry?

The Witness. June 7, 1952.

The Court. And where, in Budapest?

The Witness. Budapest. And six weeks later I was already transferred to the north, to a camp in north Hungary, and I hadn't seen her for several months after that.

The Court. What kind of a ceremony?

[fol. 92] The Witness. That was both civil and religious ceremony.

The Court. Were religious ceremonies permitted at that time?

The Witness. Well, they were permitted but they were frowned upon.

Q. Dr. Berenyi, while you were in the army and after you graduated from medical school did you attend any indoctrination classes?

A. Yes.

Q. How many?

A. That was part of the—how you call it in English—the course of discipline in the army, just as marksmanship or strategy or tactics for every person in the army including medical officers. That was called the indoctrination of Marxism-Leninism.

Q. And you took courses in that?

A. Yes.

Q. Did that mean that you favored or believed in Marxism or Leninism?

A. No.

Q. Were there other members of the Hungarian Army Medical Corps similarly situated as yours?

A. That is correct.

Q. Now, Dr. Berenyi, do you know now to your knowledge whether your wife is now or was ever a member of the Communist Party?

A. No. She has never been.

Q. Do you know now whether or not she at any time while a student at the university, the medical school, was active in any Communist Party activities?

A. No.

Q. Was she active politically at all?

A. No.

Q. Were you active politically at all either as a Communist or anti-Communist?

A. No.

Q. You were not involved politically, is that right?

A. That is right.

Q. Did you belong to any organization, even if it be a non Communist organization?

A. Well, before I joined the medical school, I was, for instance, a boy scout.

Q. Other than that any political organizations?

A. No, no.

[fol. 93] Q. Democrat-Republican type?

A. No.

Q. In Hungary?

A. No, no.

Q. You had no political involvement, is that right, sir?

A. That is correct.

Q. Now, Dr. Berenyi, did there come a time in 1956 that you left Hungary?

A. Yes. That was in 1956.

Q. Now, sir, would you tell the Court when it happened in 1956 and describe the circumstances of your leaving Hungary?

A. In November, 1956, November 4 of 1956 to be exact, the Hungarian uprising was defeated by the new wave of Russian troops which was about 200,000; and then everybody saw, including myself, that the hopes for a democratic Hungary are more or less lost. We had it only for two weeks, from October 23, to November 4. And then my wife, myself and other persons who were living in the same quarters where we lived, we were contemplating and thinking about the possibilities, how to leave the country because through the Radio Free Europe you could hear messages of Hungarians who passed through close to the Austrian-Hungarian border and landed safely in Austria.

The Court. Had you left the army at this time?

The Witness. Not yet. I was still in the army, and I was thinking about how to manage to get through the border without being in the army because I knew if they captured me, that is immediate death because of desertion, accusation of desertion. So in November 18, 1956, I asked my commanding officer to be released from the army. Now he did not have any power to do that, but the times were very mixed up then, and he says, "Well, I could put down my name and the fact that you asked to be released from the army." And I could even present it to the court.

I still have the document with me at home. That was the only personal document I had when I went through [fol. 94] the borders, in which he stated that: for his own request he is released from the Army of Hungary, Novem-

ber 18, 1956. November 19 we went to the main railroad station of Budapest and we were lucky to get on a very crowded train which moved toward west Hungary and getting off the train about ten miles from the Austrian-Hungarian border. This trip, which was one of 150 miles, took two days according to those circumstances. The train stopped every few miles and then we walked through the border with some other persons with us. And we were fortunate enough to pass through two Russian post guards and we haven't encountered any Russians, and we didn't have to fight ourselves through.

We just walked through and we go to Austria, what we could recognize as Austria because the Austrians put up Austrian flags around the border line, red-white-red Austrian flag, and there we were in Austria. And as soon as we got there we felt much better. As a matter of fact, myself, I drank about a quarter of rum because we kept that rum to sort of bribe the Russians if we meet them.

They told us they are quite willing to let people go if you have some food or drinks.

So that is the story of my going through the border.

The Court. What document did you say that you have at home?

The Witness. It is a personal certificate of—how you call it—everybody in Hungary had to and I guess they still have to carry documents on which your picture is.

The Court. Identification?

The Witness. That is correct, identification card. And because I was a member of the armed forces I had my picture in it as a Captain of the Hungarian Army and that [fol. 95] was the identification I came to Vienna with to submit my application to the United States Consul. They were quite surprised when they saw me.

The Court. Did you say that some superior officer wrote something on that?

The Witness. Yes, yes. His name is Kiraly, which is equivalent to the word of King here.

The Court. Did he sign his name?

The Witness. Yes, he did.

The Court. Do you have any objection to producing that in court tomorrow morning?

The Witness. I will be glad to.

Mr. Spar. Thank you very much for that. I didn't know of it, your Honor.

Q. Dr. Berenyi, when you left Hungary, did you take any of your possessions with you?

A. Just two bags. One of them had our medical credentials, my wife's and myself, medical credentials, and in the other bag, both of us we had a change of clothes, tooth paste.

Q. Did you leave anything in your native city?

A. We just closed our apartment and we left.

Q. Was there furniture there?

A. Yes. Everything what we worked for four years.

Q. You abandoned it all?

A. Yes.

Q. And you deserted the army?

A. That is correct.

Q. As a matter of fact, your wife was also then in the medical corps?

A. Not at that time. On her personal request she was released about 10 days prior to this.

Q. But you deserted the army?

A. Yes.

Q. And took the risk of being shot?

A. That is correct, because I didn't try to have the imagination that that signature of that captain who signed my personal identification card would have meant anything in court or anywhere else.

[fol. 96] Q. Now from Vienna, Austria, where did you go?

A. We stayed about a week in Austria waiting for our turn to be flown to the United States.

Q. And were you then brought to the United States?

A. That is correct.

Q. And were you then admitted to the United States for permanent residence?

A. Yes. December 4, 1956.

Q. And since December the 4th, 1956, have you continuously lived in your new country?

A. That is correct.

Q. Have you ever left the United States?

A. Once, just for a weekend we went to Canada.

Q. And other than that weekend you have been here at all times?

A. Yes.

Q. Now, Dr. Berenyi, subsequent to your arrival in the United States, did you obtain a job as a medical officer or as a medical employee anywhere?

A. Yes. We arrived in the United States December 4, 1956, and on December 22, 1956, we were already interns at the Coney Island Hospital in Brooklyn, New York.

Q. When you refer to "we," you are referring to your wife and yourself?

A. That is correct.

Q. How long did you serve as an intern?

A. We served our full year of internship. We were quite fortunate to get an internship at that time because internships are usually given from July to July, but this hospital—

Q. After you completed your internship at Coney Island Hospital, where next did you go?

A. We went—we didn't have a residency available because of the fact I mentioned, that residencies and internships here in this country are renewed from July 1st to July 1st, so we knew that we have to wait a half a year in order to get a residency. So we moved to my in-law's apartment in New York, Townsend Avenue, and we took a job. She took one and I took one in a small private hospital for three months' time as house physicians, which [fol. 97] didn't contribute to our credentials at all. And

after three months we had to leave it because we were not eligible for the New York State Board Examination.

So, therefore, we went to New Jersey where they did not require eligibility for state examination as a prerequisite for taking any kind of medical jobs. Then we took another three months' job in New Jersey, Hasbrouck Heights Hospital, to be correct, where we served again as house physicians.

Then July 1st, 1958, we started our approved residence training.

Q. Where?

A. Magdalena, my wife, she took residency at the Orange Memorial Hospital in internal medicine, which was her chosen specialty, and I took a year residency in pathology at the Mountainside Hospital, Montclair, New Jersey. I took it for one particular reason. I knew that because I was always in group service in the army, I had to refresh my knowledge about basic sciences and it came very handy for me, this year of residency in pathology, for my state board examinations.

Q. Thereafter?

A. Thereafter we moved to Massachusetts and we have lived here ever since. That was July 1st, 1959. She went to the Boston City Hospital to have two more years of residency in internal medicine, and I went to start my resident training in anesthesiology at the New England Deaconess Hospital where I finished my training June 30, 1961. In the meantime, both of us, we took and passed the Massachusetts State Board examination and we are licensed physicians.

Q. Are you licensed physicians in any other state?

A. Yes, in Illinois, State of Illinois, and the State of Virginia.

Q. Is your wife also so licensed?

A. Yes.

Q. Now since the last time in 1961 where have you been associated as a doctor?

A. After July 1st, 1961, I applied for a position as a full time staff member at the New England Center Hos-
[fol. 98] pital, otherwise known as Pratt Diagnostic Clinic in the anesthesia department where I—

The Court. What department?

The Witness. Anesthesia department, which period of three years I rose to the academic rank of senior instructor in anesthesia at the Tufts University Medical School, and because I knew that I needed three years' practice—that is a rule—in anesthesia in order to take my specialty board examination, I stayed with them until July 1st of this year.

Q. You remained at Tufts as a senior instructor?

A. That is correct.

Q. In anesthesiology?

A. And I passed my specialty board of anesthesia in April of this year in Palm Beach, Florida.

Q. Dr. Berenyi, are you now connected or associated with any hospital?

A. Yes. I am in private practice of anesthesiology at the Massachusetts Eye and Ear Infirmary.

Q. Are you one of the anesthetists assigned to that hospital?

A. Yes.

Q. Are you on active duty in that hospital?

A. Yes.

Q. To this day?

A. That is correct.

Q. You no longer teach at Tufts?

A. No, I don't. I expect to teach at Harvard. I will probably have my appointment at Harvard Medical School because our hospital where I am working now is affiliated with Harvard Medical School.

Q. Are you now a diplomate or a member of a specialty board?

A. Yes. I am a board certified diplomate of the board of anesthesiology.

Q. Now one or two questions, Doctor, and I am completed. Were you ever a group leader in the study groups in 1948-1949?

A. No, I was never.

[fol. 99] Q. Were you attending the groups though as a study student?

A. Yes, I was.

Q. And did you hear Dr. Kury testify that you were a leader in politics?

A. Yes, I did hear his statement.

Q. And would you tell his Honor whether or not you were such a leader?

A. No. It is not true. I never was a leader of these groups or any kind of groups.

Q. But you did attend these groups' study?

A. Yes.

Q. Were they 20 in number?

A. Just about.

Q. How well do you know Dr. Kury?

A. Very, very superficially. For instance, when I heard he has this statement to make about me and I hear his name, I couldn't put him in anywhere. I couldn't recall a name like this, but when I saw him at the Immigration Service, I recognize his face, that I have seen him, medical school, but I didn't remember his name at all.

Q. What are your feelings toward the United States?

A. I am very grateful to this country because this is the first time that I could practice medicine freely instead of moving from place to place in forlorn army camps and watching latrines and food hygiene instead of practicing medicine, what I always wanted to be, a practitioner of medicine.

Q. What is your feeling to the United States as far as its form of government is concerned?

A. I think it is, at least to me it is the most ideal type of government because it lets you work. It lets you do what you want to do and, well, maybe because the contrast was

so great, I am all for the free enterprise in this country, medicine included.

Q. Do you believe in the United States Constitution and our form of government as practiced in the United States?

A. Yes, I do.

Q. Are you willing to take an unqualified oath of allegiance to the United States?

A. Yes, I am.

Q. Are you willing to bear arms and serve in the armed forces of the United States without hesitation?

A. Yes, I am willing.

[fol. 100] Q. And would you do that if it was in combat duty?

A. Yes, any time that I am called upon.

Q. You have no hesitancy whatever?

A. No.

Q. And you make no qualifications?

A. No.

Mr. Spar. No further questions.

Cross examination.

By Mr. Sullivan:

Q. Dr. Berenyi, what assistance, if any, did you give the freedom fighters during the rebellion?

Mr. Spar. I didn't hear the question.

The Witness. May I have—

Q. What assistance if any did you give the freedom fighters at the time of and subsequent to the rebellion?

Mr. Spar. It is objected to as irrelevant and immaterial.

The Court. He may answer.

Q. Doctor—

A. Shall I answer? I did not fight with the freedom fighters with bearing arms in my hands, but I did treat

people who were wounded during that period of time and that is what I would say.

Q. During the uprising and subsequent thereto you were still in the army?

A. Yes.

Q. Wearing a uniform?

A. Yes.

Q. Wasn't it a fact that the freedom fighters were going after the officers in the army?

A. It is not a fact at all because most of the groups of the army, as a matter of fact, turned against the Russians. And I could tell you, and you can check on it if you want to, that my division where I was serving as medical officer, which was an anti-aircraft division in Budapest which was trusted to protect Budapest against so-called enemy air attacks, this division was using the anti-aircraft guns against the Russian tanks.

[fol. 101] Q. Doctor, when you did get into Vienna, did you go into a concentration camp?

A. Refugee camp. I stayed there for two days or so.

Q. And did you enter the United States as a refugee?

A. That is correct.

Q. Now there is a distinction between entering as a refugee and entering with a visa. Did you have a visa?

A. I got a green card.

Q. Were you screened in the refugee camps like all the others?

A. Yes. In Vienna we were screened definitely.

Q. When did you leave Hungary?

A. I left Hungary November 19, 1956. I left Budapest at that time.

Q. When did the uprising cease?

A. It ceased—well, it was defeated November 4, but the actual armed resistance ceased just about at the end of November, I think, and there was sporadic spots where there were some people who were fighting.

Q. But you did not come into the country as a refugee; you came in with a visa?

A. We were refugees, all of us.

Q. You were called escapees, were you?

A. Yes.

Q. Is that one and the same thing?

A. We were granted a visa by the United States Consulate, but we were still called refugees. We didn't have money to come to this country. Different kind of charitable organizations paid for our transfer. For instance, I was brought here by the Catholic Church. If someone was Jewish, he was brought in by the Jewish group of churchmen.

Q. When you were questioned by your sponsor, what position did you tell them you would take when you came to the United States?

A. Physician. I told him I am a physician.

Q. Physician?

A. That is right.

Q. Are you sure of that, Doctor?

A. Oh, definitely so.

Q. Isn't it a fact that you told them you had been a packer in a factory?

A. No.

Q. That you made no mention that you were a physician?

A. I don't know where you get that, Mr. Sullivan. This [fol. 102] is the second time you ask me questions which were absolutely ridiculous.

Q. Just answer yes or no.

A. No. I did not write anything like that, that I was a packer.

Mr. Spar. Thank you, Doctor. No further questions. Now, Doctor, you will be recalled tomorrow morning for the purpose of producing the document that the Court has asked for.

The Court. Ten o'clock. We are having a call of the criminal list tomorrow morning beginning at half past

nine, and I don't expect that we will be through before 11 o'clock. So that this case will resume tomorrow morning at 11. So 11 o'clock tomorrow morning. You are excused until then.

MAGDALENA RETSAGI BERENYI, sworn.

Direct examination.

By Mr. Spar:

Q. Doctor, would you state your full name?

A. Magdalena Retsagi Berenyi.

Q. Where do you live?

A. 130 Boylston Street, Chestnut Hill, Massachusetts.

Q. Dr. Berenyi, are you the wife of the previous witness, Kalman J. Berenyi?

A. Yes, I am.

Q. Were you married to him in Budapest, Hungary, on June the 7th, 1952?

A. Yes.

Q. And have you lived with him continuously as husband and wife except for such times as you were separated during his army service?

A. Yes, I did.

Q. And there are no children of the marriage?

A. No.

Q. Dr. Berenyi, how long have you lived in the Commonwealth of Massachusetts?

A. Since July 1st, 1959.

[fol. 103] Q. Prior to that time and subsequent to your entry into the United States have you lived in the states of New York and New Jersey?

A. That is right.

Q. And no other place?

A. No, sir.

Q. Have you lived in the United States since your entry into this country?

A. Except for a weekend when we went to Canada. No.

Q. What was the date of your last arrival in the United States for permanent residence? What was your last day of arrival? When did you arrive in the United States, permanent residence?

A. December 4, 1956.

Q. Dr. Berenyi, have you been in the courtroom all during the day today?

A. Yes, I was.

Q. Hearing the testimony?

A. Yes.

Q. Doctor, is it a fact that you entered medical school at Budapest University Medical School in 1946 as a freshman?

A. Yes.

Q. And did you continue as a student at that school the entire time until you graduated some time in 1952?

A. Yes.

Q. Now during part of the time did you serve in the armed forces of Hungary?

A. Yes, I did. Since 1950.

Q. In what capacity were you taken into the army?

A. I was a student, four-year medical student when I was taken into the Medical Corps of the Hungarian Army.

Q. Now, Dr. Berenyi, would you tell us why you joined the Medical Corps of the Hungarian Army?

A. Yes. My parents left Hungary with my two little sisters in 1948. They came to the United States and they are living here since. I came from a family with relatively good means. They left me some money, but it didn't last through my medical training. I could exist from 1948 to 1950.

In 1950 my funds ran out and I had no other means by which I was able to finish my medical education. I was in my fourth year then. Since the Hungarian Army paid for my tuition and I received board and food and books, I thought that is a suitable arrangement for me for the remaining two years.

[fol. 104] Q. Now in order to join the armed forces did you become a member of the Communist Party?

A. No, I was not.

Q. Did you ever at any time in the United States or Hungary or any part of the world become a member of the Communist Party?

A. No, sir.

Q. Did you at any time advocate the overthrow of the United States Government by force and violence?

A. No, I never did.

Q. Did you at any time advocate, promote or join with any Communist Parties or groups?

A. No, I didn't.

Q. Did you at any time, Dr. Berenyi, give anything of value to the Communist Party?

A. No, I didn't.

Q. Or to any other organization, group or person cooperating with the Party?

A. I didn't.

Q. Now, Dr. Berenyi, you testified that mother and dad and your two younger sisters came to the United States earlier?

A. Yes, sir.

Q. Why didn't you go with them?

A. Because I was over 18 and the Hungarian Government didn't give me permission to leave.

Q. Did you apply for permission?

A. Yes, I did.

Q. At that time was there already an influx of Communism in Hungary?

A. Yes, it was.

Q. That is when mother and dad—

A. That was the reason why my parents left Hungary.

Q. To escape the oncoming Communists?

A. That is right.

Q. But you were not permitted to leave?

A. No. Because I was born in 1927 and in 1948 I was over 21 and according to Hungarian rules, everybody who was over 18 was not eligible to follow parents any more.

Q. And you would have gone with your parents?

A. Of course.

Q. Now, Dr. Berenyi, did you thereafter, while you were at school at the Budapest Medical University, did you at any time belong to study groups?

A. Yes.

[fol. 105] Q. And were these groups of 20 or more students?

A. Just about.

Q. And what was the purpose of these classes or groups?

A. Well, after the second World War the medical school attendance was extremely high. In every class there were around 500-600 students. The teaching would have been impossible with such a large mass of students, so it was decided that since the hospital facilities were rather scanty, that they will subdivide the students in student groups.

Q. Now were these student groups in any way involved in ideological study of Communism while you attended the college?

A. Yes.

Q. Was that required?

A. That was obligatory.

Q. Did you voluntarily and on your own accord speak for Communism?

A. No, I didn't.

Q. Did you at any time participate in political situations or discussions?

A. I didn't.

Q. Were you in any way involved with politics while a resident of Hungary?

A. Except that I participated in those student groups, no.

Q. And were you a passive participant?

A. I was a good student. I was good in anatomy. I was good in physiology. I was good, I imagine, in Marxism too.

Q. You were good in it. These were your subjects of study?

A. That is right.

Q. Did you believe in Marxism-Leninism?

A. I didn't.

Q. Did you approve the form of government that came into power in Hungary?

A. No, I didn't.

Q. Did you approve of the form of government of Russia?

A. I didn't.

Q. Now did you ever make your feelings known?

A. Yes, I did.

Q. To whom?

A. Well, to our friends, and I think it was rather obvious since Budapest, being our country, our city, that we were born and brought up, almost everybody know your [fol. 106] background, and it would have been almost impossible for me, coming from a family that I came from, to belong to a Communist Party.

The Court. What kind of a family are you referring to? You see, I am not familiar with your family background.

The Witness. Nothing unusual except that my parents were wealthy people.

The Court. What was your father's occupation?

The Witness. He was a senior executive in a good-sized firm.

The Court. What kind of a firm?

The Witness. Textile manufacturing firm.

The Court. Textile manufacturing?

The Witness. Yes, yes.

Q. When mother and dad left Hungary for the United States, did they leave any assets in Hungary?

A. Some, yes, they did.

Q. Was that left for you or was it confiscated?

A. Well, some was confiscated; some was left for me; and as I said, I could finish my studies without any external support, outside support until just about 1950.

Q. Dr. Berenyi, did they lose any property?

A. My parents?

Q. Yes.

A. Yes, they did.

Q. As a result of leaving Hungary?

A. Yes, they did.

Q. Dr. Berenyi, while you served in the armed forces of Hungary did you at any time serve in active duty in the shooting or on the front lines of the Hungarian Army?

A. No, I didn't.

Q. Was your work basically detail to that of working in a hospital or in a medical unit of a camp?

A. Yes. I worked in a hospital, in an army hospital.

Q. And nothing else?

A. Nothing else.

[fol. 107] The Court. We will recess at this time. I have some other matters to attend to, and I can't go on later than this time on this case. So we will resume the case tomorrow morning at 11 a.m.

(Whereupon, the trial was recessed to be resumed on Tuesday, December 1, 1964, at 11 a.m.)

SECOND DAY

Courtroom No. 5
Federal Building
Boston, Massachusetts

Tuesday, December 1, 1964

Mr. Spar. If your Honor pleases, during the afternoon hearing yesterday you mentioned to Dr. Kalman Berenyi that you would like to inspect his Army medical book.

The Court. In his testimony he mentioned an identification card, containing his photograph and with some writing on it, and he testified that an officer had written something

on it which indicated that he had been discharged from the army.

Mr. Spar. Placed in reserve status.

The Court. Or placed in reserve status, whatever it was that he testified to. I asked him if he had any objection to producing that document this morning and he said he had none; and I asked him if he wouldn't produce it this morning.

Mr. Spar. Your Honor pleases, may I present that book to your Honor.

The Court. Will you show it to Mr. Sullivan please.

Mr. Sullivan. No objection.

The Court. No objection. Do you offer it in evidence?

[fol. 108] Mr. Spar. I offer it in evidence, your Honor please.

The Court. Is this your first exhibit, Mr. Spar?

Mr. Spar. Beg your pardon.

The Court. Is this your first exhibit?

Mr. Spar. Yes, sir.

The Court. Exhibit A.

Mr. Spar. Thank you, sir.

(Red hard cover book bearing number 34390, the name Dr. Berenyi Kalman, and a photograph, consisting of 30 pages marked Exhibit A.)

The Court. Mr. Spar, this typewritten paper entitled "translation of Kalman J. Berenyi's personal document," do you vouch for the accuracy of this?

Mr. Spar. Yes, sir. I checked it with the two Dr. Berenyis this morning. It was actually translated by the male member of the family, Dr. Kalman Berenyi, who is adept in both English and the Hungarian languages, sir.

The Court. Very well. We will have the translation marked and admitted as Exhibit B.

(Paper entitled "translation of Kalman J. Berenyi's personal document" marked Exhibit B.)

The Court. Mr. Sullivan, did you see the translation?

Mr. Sullivan. Yes, your Honor.

The Court. You have no objection to that going in?

Mr. Sullivan. No objection.

The Court. Was Mrs. Berenyi on the stand?

Mr. Spar. She was, sir.

The Court. She may resume the stand.

Mr. Spar. Would the Reporter be good enough to read the last question before we recessed yesterday as far as Mrs. Berenyi is concerned.

(Question and answer read.)

[fol. 109] Q. Now, did there come a time, Dr. Berenyi, that you were discharged from the Hungarian Medical Corps?

A. I asked my discharge in 1956, August, if I remember correctly.

Q. And that was before you and your husband escaped or left Hungary?

A. That is right.

Q. And were you actually discharged?

A. Yes, I was.

Q. From the Army service?

A. Yes.

Q. And being a woman, you had little difficulty in obtaining such discharge?

A. Well, during that period of time before the revolution it seemed to me that there was a little ease in the pressure, in the political pressure in the Hungarian Government, and I thought that that period would be a good period to try to get my discharge. And the political situation started to be rather shaky, so they didn't make too much fuss about it and they let me go.

Q. You were discharged?

A. Yes.

Q. Now, Dr. Berenyi, would you tell us now: with whom did you live in Hungary just prior to your marriage and after your marriage? Any member of the family?

A. Yes. Until 1948, that is, I lived with my parents and two sisters and one brother. After 1948, when my parents came to the United States, my father's sister, Mrs. Farkas, came over with her husband, and she lived with us until we came to the United States together in 1956.

Q. Well, madam, when you say "she lived with us," you mean she lived with you until you were married?

A. That is right.

Q. And thereafter your husband came to live in the same apartment with you?

A. Yes.

Q. And your aunt and uncle Mr. and Mrs. Farkas?

A. That is right.

Q. By the way, you testified a few moments ago that your mother and father and two sisters left for the United States in 1948?

A. Yes, sir.

Q. Is it a fact that your father was not a Hungarian born person?

A. No. He was born in Czechoslovakia.

[fol. 110] Q. And is it a fact that he was allowed to come to the United States under the Czechoslovakian quota?

A. Yes, sir.

Q. Not as a Hungarian?

A. Yes, sir.

Q. He was allowed to bring his wife and two daughters under the Czechoslovakian quota but not yourself?

A. Yes, sir.

Q. Now, Dr. Berenyi, bringing you now to the time you are leaving Hungary, do you remember the day or the year?

A. When we left Hungary?

Q. Yes.

A. It was 1956, November 19 or 20. It was 20—5 o'clock a.m. exactly.

Q. Had there been fighting in the streets?

A. No. The fight was practically over.

Q. But there had been previously?

A. Oh, yes, it was.

Q. In an attempt to overthrow the Communist regime?

A. That is right. But November 4, when the Russian tanks came in the second time to Budapest, then really they crush the uprising.

Q. Now could you tell this Court on whose side you favored?

A. Well, obviously, I favored the freedom and the uprising. That was really our only hope to get independent from Russia and it was rather unfortunate that it just didn't come out as we hoped.

Q. Dr. Berenyi, during this uprising did you participate medically in helping those who were injured?

A. Yes, yes. I stayed in the hospital for three weeks without any single day of leave and really we were rather busy.

Q. Helping those who were injured?

A. Yes.

Q. Taking care of their needs?

A. Yes.

Q. Now, Dr. Berenyi, would you describe to this Court your leaving Hungary with your husband?

A. Well, as my husband mentioned it—I think he did—we listened to Radio Free Europe as the only single newscast which came through during that time and we heard several friends of ours who crossed the border and arrived [fol. 111] to Austria, and we spoke about leaving Hungary so many times that really we were practically prepared to leave at any minute. And I remember correctly I came home Sunday night from the hospital—that was the 17th of November—and Monday morning my husband went into the hospital and asked his discharge on the 18th of November. And then the 19th, 5 o'clock—no, I think that was the 20th already, Tuesday morning, 5 o'clock—we left Budapest, our apartment. And I remember we had a doorman in the house, in the building, and he asked us, "Where are you going so early in the morning?"

And we said, "We are going down to the country to fetch up some food," because during that period of time there was really not too much food in Budapest.

And he said, "But you be back?"

We said, "Oh, yes, we will be back in 24 hours or so."

And then four of us—no, rather, five of us—because one soldier who worked, private soldier who worked with my husband as a medical aid during his stay in the military camp—he came with us. Five of us.

Q. Will you tell who the other two were?

A. Mr. and Mrs. Farkas.

Q. That is, your aunt and uncle?

A. My aunt and uncle. And we left, and we went, took a train, and we went to the farthest border point, and then we changed clothes and we were dressed as farmers, and we went to the border and next night, it was early morning, around 3 o'clock, we walked through the border to the Austrian border.

Q. And you made your escape from Hungary?

A. Yes.

Q. Now, Dr. Berenyi, did you take your personal possessions and your belongings with you?

A. Except we took our personal papers, our marriage certificate, our diploma, our medical papers, took the brush and personal belongings but nothing—

Q. Only what you could carry by hand?

A. That is right, in one litle valise.

[fol. 112] Q. Your furniture and other clothing?

A. We left everything behind.

Q. You left the complete apartment intact?

A. That is right.

Q. And is that equally true of Mr. and Mrs. Farkas, your uncle?

A. That is right.

Q. You went barehanded practically?

A. Yes.

Q. From Vienna or from Austria did you finally arrive in the United States?

A. Yes.

Q. And did you come here for permanent residence?

A. Yes.

Q. And were you screened before you came to the United States?

A. Yes.

Q. Were you interrogated?

A. Yes.

Q. And did the American officials question you as to your background?

A. Yes.

Q. And the statements that you made today, are they the same that you told the consular official then?

A. Yes, sir.

Q. Were there any deviations?

A. No, there are none.

Q. They are exactly accurate today as they were then?

A. Yes, sir.

Q. Now were you questioned about your affiliations in any organizations at that time?

A. Yes.

Q. And did you tell the truth?

A. Yes.

Q. And you have told the truth concerning them in your petition for naturalization?

A. Yes, sir.

Q. Now since your arrival in the United States—your husband has testified and I don't want you to go into it at length—you and he served internships at Coney Island Hospital as medical interns?

A. Yes.

Q. And thereafter you served other medical internships?

A. No. I had three years of medical residency which is the requirement for eligibility for internal medicine.

Q. And since your arrival now in Boston, Massachusetts, have you been associated or connected with any hospitals?

[fol. 113] A. Yes. I am on the teaching staff of Boston University Medical School.

Q. Do you teach a particular subject?

A. I teach internal medicine.

The Court. Since when did you say?

The Witness. Since 1961. Since I finished my resident training.

Q. Have you been continuously on the teaching staff at Boston University Medical School?

A. Yes, sir.

Q. And are you a specialist in internal medicine?

A. Well, I haven't had a chance to take my Boards because the Board requires citizenship.

Q. And, Dr. Berenyi, but you do practice internal medicine?

A. Yes, I do.

Q. And you maintain an office in the Boston area?

A. Yes.

Q. In internal medicine?

A. Yes, sir.

Q. Now, Dr. Berenyi, in addition to your affiliation with Boston University are you affiliated with any other institution?

A. After receiving my state board examination, from 1961 to 1963 I was an attending physician at the Holy Ghost Hospital in Cambridge. That was sort of a part time job. And since 1962 I am on a part time basis, affiliated on the medical staff of MIT.

Q. Is that the Massachusetts Institute of Technology?

A. Yes.

Q. And you have taken care of the student body?

A. Yes.

Q. Taking care of the health of the student body?

A. Yes.

Q. And are you still presently affiliated with MIT medical staff?

A. Yes, sir.

Q. Is that right, doctor?

A. Yes.

Q. Now, doctor, I would like to read to you from Government Exhibit 2-D in evidence, consisting of your appli- [fol. 114] cation for a petition for naturalization, question 8:

"Have you ever, in the United States or in any other place, been a member of, or in any other way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group or person?"

Your answer to that question was No. Was that the truth when you made that statement?

A. Yes.

Q. In January of 1962?

A. Yes, that was true.

Q. And is it true today?

A. Yes, it is true today.

Next question: "Given anything of value to the Communist Party, or to another organization, group, or person cooperating with that Party?"

And your answer was No. Was your answer truthful when you made that statement in 1962?

A. Yes, it was.

Q. It is truthful today?

A. Yes, it is.

"Believed in, taught, or advocated Communism?"

And your answer was No. Was that truthful when you made it?

A. Yes, it was.

Q. Is it truthful today?

A. Yes, it is.

Question 9: "Do you believe in the United States Constitution and form of Government of the United States?"

And your answer was Yes. Was your answer truthful when you made that statement in 1962?

A. Yes, it was.

Q. And is it truthful today?

A. Yes, it is.

Q. You do believe in our form of Government?

A. Yes, I do believe.

[fol. 115] Question: "Are you willing to take an unqualified oath of allegiance to the United States?"

And your answer to that question was Yes. Was that answer truthful when you made it in 1962?

A. Yes, it was.

Q. And is it truthful today?

A. Yes, it is.

Q. Have you always believed in that?

A. Yes, I did.

Q. Are you willing, Mrs. Berenyi, unqualifiedly to take an oath of allegiance to the United States Government?

A. Yes, I would.

Q. Are you willing, Mrs. Berenyi, to take up arms in the defense of the United States Government in combatant service if called by this Government?

A. Yes, I would.

Q. And do you say so unqualifiedly?

A. Unqualified.

Mr. Spar. I have no further questions.

The Court. Mr. Sullivan, you may question the witness if you wish.

Cross examination.

By Mr. Sullivan:

Q. Doctor, with reference to the filing of your petition do you recall the question: To what organizations you belonged to?

A. Yes.

Q. Do you recall the answer you gave?

A. Yes.

Q. What was your answer?

A. Well, when we filed the petition, I said: none, except to the Hungarian Army, but later on we made an additional statement that I did belong to the Mefesz.

Q. Do you recall I called you back about a month later?
A. Yes.
Q. And what reason did you give for not revealing it at the time you filed the petition?
A. Because I didn't consider Mefesz as a political organization, and the question was stated: whether did I belong to any political organization or not.
[fol. 116] Q. I see. Doctor, what is the Medikus Kor?
A. The Medikus Kor means translated to English a circle of medical students.
Q. Did you belong to the Medikus Kor?
A. Yes, I did, but that was part of Mefesz.
Q. Do you recall when you were asked the question in May of 1962: did you belong to the Medikus Kor?, the answer you gave?
A. I think I did, yes.
Q. This is a transcript of the testimony.

The Court. What page are you reading from?
Mr. Sullivan. Page 2, your Honor.

"Have you ever been a member of the Medikus Kor?"

The answer was No.
A. That was an obvious mistake because in every instance I said I was. Maybe you could find some other reference, Mr. Sullivan, when I stated that I was.
Q. Doctor, you attended school at the same time your husband did?
A. Yes.
Q. When you applied for a visa, and I believe you came in with a visa and not as a refugee?
A. No. We came as a refugee. We never applied for a visa.
Q. You did have a visa when you came into the country?
A. We never had any visa.
Q. You never had a visa?
A. No.

Q. Will you please take a look at this visa and tell the Court whether it is your visa. This shows you arrived Newark, New Jersey, December 4, 1956.

A. That is me, no doubt.

Q. When you applied for that visa—

Mr. Spar. Objected to, if your Honor pleases. The document is not in evidence and I don't think it is fair to characterize it.

[fol. 117] The Court. That is true. Do you intend to offer it in evidence?

Mr. Sullivan. It will not be introduced in evidence, your Honor.

Q. When you applied at the United States Consul in Vienna for a visa to come to the United States—

The Court. Well, she hasn't testified that she has. She has not yet testified that she did so apply.

Mr. Sullivan. Excuse me. Strike it out.

Q. Did you tell the consul that you were a member of the Hungarian Army?

A. I never applied for a visa. I never applied for a visa, Mr. Sullivan.

Q. And you did apply for a visa?

A. No, I never did.

The Court. There is some testimony that the witness gave which is not quite clear to me. In answer to a question asked of her after a document was shown to her she said, as I recall it, "Obviously that is me."

Will you read that back, several questions back when Mr. Sullivan showed her a document?

(Question and answer read.)

The Court. Now in view of the fact that the document was shown to Dr. Berenyi, in reference to which she said, "That is me, no doubt"—in view of the fact I haven't seen that document, it is not in evidence, what do you expect me to make of this testimony?

Mr. Sullivan. The point was brought out, your Honor, just that whether she came in as a refugee because refugees were not in possession of a visa.

The Court. I don't know as of now what the situation is in view of the fact that you are not showing the Court [fol. 118] what it is that you showed her.

Mr. Sullivan. Your Honor, we will withdraw the other question. Sorry.

The Court. What is that?

Mr. Sullivan. Concerning the visa.

The Court. Do you wish to make a motion to strike the questions and the answers? Are you making a motion? Is it your intention to make a motion to strike all reference to this paper that you referred to as a visa?

Mr. Sullivan. That is right, your Honor.

The Court. Any objection to that being struck?

Mr. Spar. None at all.

The Court. The motion is granted and all reference to a document referred to by Mr. Sullivan as a visa and Dr. Berenyi's statement to the effect that that was she, no doubt, is also ordered stricken.

Q. Doctor, in your dealings with the American Consul did you ever tell him you had been a member of the Communist Hungarian Army?

A. That was not the Communist Hungarian Army, Mr. Sullivan. That was the Hungarian Army.

Q. Did you tell him you were in the Hungarian Army?

A. Yes, I did.

Q. Doctor, do you still testify to the fact that you were never a member of the Communist Party?

A. Yes, I do.

Q. That your husband was not a member of the Communist Party?

A. Yes, I do.

Mr. Sullivan. That is all, your Honor.

Redirect examination.

By Mr. Spar:

Q. Just one question, Dr. Berenyi: were you lawfully admitted to the United States for permanent residence?

A. I have here my green card.

[fol. 119] Q. Now for the purposes of the Record I ask that you show it to me?

The Witness. May I, your Honor?

The Court. Yes.

Mr. Spar. Would you take the witness stand please.

The Witness. I am sorry.

Q. Dr. Berenyi, do you have in your possession an Alien Registration Form known, commonly known as the green card signifying your permanent residence admission to the United States for permanent residence?

A. Yes, sir.

Q. Does you name and your photograph appear thereon?

A. Yes, sir.

Mr. Spar. I offer that document.

The Court. Show it to Mr. Sullivan. Is there any objection?

Mr. Sullivan. No objection, your Honor.

The Court. Exhibit C.

(Magdalena Berenyi Alien Registration Form marked Exhibit C.)

Q. Dr. Berenyi, do you have in your possession, handed to you a few seconds ago, the Alien Registration Card of still another person?

A. Yes. I have my husband's.

Q. And do you recognize the photograph on it?

A. Yes, of course, I do.

Q. And is that his green card signifying his lawful admission to the United States for permanent residence?

A. Yes, sir.

Mr. Spar. I offer the same in evidence.

Mr. Sullivan. Object, your Honor.

The Court. On what ground?

[fol. 120] Mr. Sullivan. This was not—the petitioner Kalman Berenyi was on the stand. It was not introduced at that time.

The Court. Aside from that, do you question the authenticity of it?

Mr. Sullivan. No answer as to the authenticity.

The Court. So if it is authentic and does it relate to the petitioner?

Mr. Sullivan. I would say it relates to the petitioner.

The Court. Kalman Berenyi?

Mr. Sullivan. That is right.

The Court. I will admit it in evidence. Exhibit D.

(Kalman J. Berenyi Alien Registration Form marked Exhibit D.)

Mr. Spar. If your Honor pleases, may these two Exhibits, C and D, be returned to the petitioners because under the Immigration Law they are required as long as they are aliens to carry it in their personal possession as identification cards.

The Court. Is there any objection to these being returned?

Mr. Sullivan. Counsel is right, your Honor. They should be in the possession of the alien at all times.

The Court. So ordered.

Mr. Spar. Thank you, Mrs. Berenyi. I have no further questions.

The Court. Do you have any questions?

Mr. Sulivan. No questions, your Honor. That is all.

The Court. You are excused.

[fol. 121] LORAND DE BICKISH, sworn.

Direct examination.

By Mr. Spar:

Q. Mr. De Bickish, will you keep your voice up?

A. Yes.

Q. Mr. De Bickish, will you state your full name and your address?

A. Lorand De Bickish. The address is 143 Cabot Street in Newton, Massachusetts.

Q. Mr. De Bickish, is it a fact that you were born in 1926 in Budapest, Hungary?

A. Yes.

Q. And you were a citizen of Hungary?

A. Yes.

Q. Until you became a citizen of the United States?

A. Right.

Q. And is it a fact, sir, that you were naturalized as a citizen of the United States in the Supreme Court in White Plains, Westchester County, New York, in December of 1963?

A. That is correct.

Q. Now, Mr. De Bickish, do you know the two Doctors Berenyi?

A. I do.

Q. Before we ask you something of their history, would you be good enough to tell us something of your family history?

A. Yes.

Q. Are you a married man?

A. Yes.

Q. And what is your wife's name?

A. Victoria.

Q. And what was her maiden name?

A. Redi.

Q. Was she also at one time a native and citizen of Hungary?

A. That is correct.

Q. Am I correct in saying that your wife and Mrs. Magdalena Berenyi were childhood friends?

A. That is correct.

Q. In Budapest, Hungary?

A. Right.

Q. And they were close?

A. Right.

Q. Now with reference to your father and mother, are they alive?

A. My mother is still alive. My father died.

Q. And where does your mother live?

A. In Budapest, Hungary.

[fol. 122] Q. Do you have any brothers or sisters?

A. Yes. I have two brothers.

Q. Will you tell something of your two brothers?

A. One of them is still in Budapest. He is a doctor, a medical doctor; and the other is in Munich, Germany, working for the Radio Free Europe.

Q. How long has he been working for Radio Free Europe?

A. I think approximately 1949 to 1950. I couldn't tell you exactly the date.

Q. Has he continuously for 14 or 15 years worked for Radio Free Europe?

A. Yes, according to my best knowledge.

Q. And does he broadcast in Hungarian?

A. Once in a while. I recognize his voice in '53-'54.

Q. But has he been beamed toward Hungary?

A. Yes.

Q. And, Mr. De Bickish, have you ever been either directly or indirectly a member of the Communist Party?

A. No.

Q. Have you ever been either directly or indirectly a sympathizer with members of the Communist Party?

A. No.

Q. Of the ideals or principles of the Communist Party?

A. No, sir.

Q. Have you ever given aid and assistance to members of the Communist Party or espoused the ideas of Communism?

A. No.

Q. Would you consider yourself an anti Communist?

A. Yes, sir.

Q. Is your brother, the man in the Radio Free Europe, a member of the anti Communist faction of Hungarians?

A. I think he has to be. I don't know for sure.

Q. But does he espouse anti Communism?

Mr. Sullivan. Objection, your Honor, calling for a conclusion from the witness.

Q. Do you know?

[fol. 123] The Court. Well, this is hearsay.

Q. If you know, sir.

The Court. Do you know of your own knowledge?

The Witness. Whether he belongs to any anti Communist groups?

Q. Does he speak against Communism in Radio Free Europe?

A. He does. I heard him speak so.

Q. Now when for the first time did you personally meet Magdalena Berenyi?

A. Oh, it must have been around 1948, maybe 1947-1948.

Q. And at that time was she a student at the Budapest Medical University?

A. Yes, I think so.

Q. Beg your pardon?

A. I think so. I couldn't remember exactly.

Q. Now, Mr. De Bickish, did you meet Magdalena Berenyi through your fiancee?

A. Yes.

Q. When were you married?

A. I was married in 1951.

Q. That would be a year before Magdalena Berenyi was married?

A. Obviously, yes.

Q. Now, sir, during the period of 1947 to 1951 when you were married how often would you say you saw Dr. Magdalena Berenyi?

A. Probably bi-weekly, monthly. It was erratic. It must have been erratic.

Q. And where did you meet her?

A. Sometimes she came to our room and socially.

Q. Now, Mr. De Bickish, did you have any talks with her with reference to the Government of Hungary, the Government of Russia, the Government of other countries?

A. Yes, we did.

Q. And could you tell us what was said in these conversations?

A. She was always speaking against the Hungarian Government after 1948, and she was definitely showing anti Communist feelings.

[fol. 124] Q. Did she ever tell you what she felt about the United States?

A. She was always very favorably—she spoke about the United States always very favorably.

Q. By the way, Mr. De Bickish, have you ever been arrested?

A. Yes, sir.

Q. And where were you arrested?

A. I have been arrested twice. Once in Budapest, Hungary.

Q. What year, sir?

A. In 1948.

Q. And what were you charged with?

A. I was charged for the intent of illegal crossing of the Hungarian border as well as possession of foreign currency.

Q. How much foreign currency?

A. $70.

Q. American money?

A. Yes.

Q. Well, was that a political crime?

A. It was considered to be a political crime.

Q. And who arrested you, the Communists?

A. Pardon me?

Q. Who arrested you?

A. The Hungarian Secret Police.

Q. And as a result of this arrest in 1948, were you convicted?

A. I was convicted and sentenced to 7 months in prison.

Q. Did you serve them?

A. I served 6 months altogether.

Q. Now were you ever arrested again?

A. Yes, sir.

Q. Where?

A. In 1949 on a train toward the Hungarian-Austrian border.

Q. Were you then seeking again to make your escape from Hungary?

A. Yes, sir.

Q. To leave Hungary?

A. Yes, sir.

Q. Why were you seeking to leave Hungary?

A. Well, we were quite dissatisfied with the life in Hungary at that time.

Q. Politically?

A. Politically.

Q. Now as a result of this arrest, were you convicted?

A. No, sir.

[fol. 125] Q. Were you acquitted or let go?

A. I was acquitted after two weeks of interrogation.

Q. You talked your way out of it?

A. Yes.

Q. Now, Mr. De Bickish, were you ever involved in any difficulties with the Hungarian Government other than those two occasions you have just testified to?

A. Indirectly, yes.

Q. Well, in 1955 were you involved?

A. In 1955 definitely, yes, sir.

Q. In what way?

A. I was deported—or maybe I should use the word exiled to a small city in Hungary from Budapest.

Q. And how far away from Budapest?

A. Approximately 200 miles.

Q. And was that east, toward the Russian border, or west, toward the Austrian border?

A. It was east, toward the Russian border.

Q. And were you permitted to return to Budapest?

A. Not until, oh, about four months or so was over.

Q. And did you take your wife and family?

A. I had to.

Q. Do you know why you were ordered exiled or sent to the east toward the Russian border?

A. Yes, sir.

Q. Why?

A. The reasoning was that I am brother to Gabriel De Bickish who is in Munich and working for the Radio Free Europe and keeping up contact with this brother of mine who is working—I think I can remember the words—who is working for the Radio Free Europe and as such is working against the People's Republic of Hungary.

Q. Now, Mr. De Bickish, while you were in exile in this small village did you have any visitors to see you?

A. Yes, I did.

Q. Who?

A. The Berenyi couple.

Q. You mean they were married then and came to visit you?

A. Yes, in 1955.

[fol. 126] Q. And thereafter did you manage to get back to Budapest?

A. Yes, in the fall of 1955.

Q. Now, sir, I return you now to the time when you met Magdalena, sir. That was in 1947 or 1948?

A. I think it was, rather, 1948.

Q. Did you form an opinion from your conversations with her when you knew her in 1947, 1948, 1949 as to whether or not she was in favor of the Communist form of Government?

A. I formed an opinion that she was not in favor of the Communist Government.

Q. And is that based upon her conversations to you?

A. Yes.

Q. Did she at any time from the day you first met her up until the present time ever tell you anything that would cause you to change your opinion as to her anti Communism?

A. She never has. She never did say anything.

Q. That would be inimical toward the American way of life?

A. No.

Q. Now, Mr. De Bickish, did there come a time that your child was born?

A. Excuse me, sir.

Q. Your child was born in Hungary?

A. Yes. She was born in Hungary.

Q. Who are the God-parents of your child?

A. The Berenyis are the God-parents of my child.

Q. And she is baptized and they were the God-parents?

A. She was baptized and they were the God-parents.

Q. Now you would consider yourself a close friend of both Magdalena and Kalman Berenyi?

A. Yes, sir.

Q. Now did there come a time when you met Dr. Kalman Berenyi?

A. Excuse me, sir.

Q. Did there come a time when you met Dr. Kalman Berenyi?

A. Yes.

Q. When did you meet him?

A. Oh, it must have been in around 1950 or so.

Q. That was several years before he married Magdalena?

A. Yes.

[fol. 127] Q. In other words, would I be fair in saying you met him when he was keeping company with her?

A. Right.

Q. Did you have occasion to talk to Dr. Kalman Berenyi?

A. Yes, I did.

Q. Were these conversations relating to politics, the political life of Hungary?

A. Most of the time it was the topic of the conversation.

Q. And what did he say to you in these conversations?

A. He always spoke very much against the Communist Government, the Communist Party, against the life in Hungary at that time.

The Court. At what time?

The Witness. In the 1951 area and when we started to meet.

Q. Now do you know whether or not either you or he or did you both listen to Radio Free Europe?

A. Yes, we used to. That was one of our favorite pastimes, to close the doors and listen to the Radio Free Europe or the Voice of America or the BBC programs.

Q. And did Dr. Berenyi, Kalman Berenyi, voice any opinions?

A. Yes.

Q. And what were they?

A. His opinion was always against the Communist regime and always in favor of the broadcast of these three stations.

Q. Did he ever at any time intimate to you or give you any feeling that he was pro Communist or was a member of the Communist Party?

A. No, he never did.

Q. Did you have an opinion to the contrary?

A. I did have an opinion for the contrary, yes, sir.

Q. Did you at any time from the time you met him in 1950 up until the present time ever hear him say anything that you would consider pro Communist in nature?

A. No, sir, I never did.

Q. Now, Mr. De Bickish, did you see Doctors Berenyi more often thereafter?

A. More often after?

[fol. 128] Q. Yes, after 1950?

A. Yes.

Q. How often?

A. Oh, I would say at least once a week we used to play bridge together.

Q. And were there conversations concerning politics?

A. Always.

Q. Now did you have an opinion as to whether or not the two Doctors Berenyi wanted to remain in Communist controlled Hungary?

A. No, they did not want. It was one of our favorite conversations to speak and plan when and where we could go out of Hungary.

Q. And did both Doctor Berenyis discuss this with you?

A. Yes, they did.

Q. And did they know that you had made two attempts to leave Hungary?

A. They did know that, yes, sir.

Q. Now, Mr. De Bickish, when did you leave Hungary?

A. I left Hungary in 1956, November the 27th.

Q. That is just around the time when the revolution against the Hungarian Communist Government was crushed, is that correct?

A. That is correct.

Q. And would you say you escaped?

A. Yes, sir.

Q. And where did you go?

A. I went first to Austria, Vienna.

Q. And who did you take with you?

A. I took my wife and my daughter with me.

Q. Now, Mr. De Bickish, when did you leave Hungary?

A. Excuse me, sir.

Q. When did you leave Hungary?

A. November the 27th.

Q. 19—

A. 1956.

Q. And were you taken thereafter to a camp in Austria?

A. Yes. We spent, I think, about a week in around the end of December at Vidnoistadt Camp which was an American camp for Hungarian refugees.

Q. Were you thereafter brought by the United States Government on to the United States?

[fol. 129] A. First, we went to Munich, Germany where we spent a few days and from there we were flown over to the United States.

Q. And were you interrogated about your own political leanings?

A. Yes, sir.

Q. And did you at all times tell the truth?

A. Yes, I always did.

Q. Now did you tell the truth to the immigration authorities and to the consul officials that you had been arrested?

A. Yes, sir, I did.

Q. And is there a record of your arrest for political activities in the files of the Immigration and Naturalization Service in the State Department?

A. Yes, sir. It is in my petition.

Q. And you told them then that you had been arrested and deported from Budapest, Hungary?

A. Yes, sir, I did.

Q. Now did you arrive in the United States on or about January the 2d?

A. January the 3d.

Q. January the 3d, 1957, and have you lived in the United States continuously since that time?

A. That is correct.

The Court. What is your occupation?

The Witness. I am an engineer.

The Court. What kind of engineer?

The Witness. I am a mechanical engineer.

The Court. Where did you receive your education?

The Witness. I do not have a diploma. I had some education in Hungary in 1947-1948, and I had some in the United States. I was admitted to the University of Miami in 1957, and I was admitted, after I move up to New York, to the City College of New York in 1959, I guess, where I had two terms.

The Court. By whom are you employed?

The Witness. By Sacker & Yale Company in Marblehead, Massachusetts.

[fol. 130] The Court. How long have you been so employed?

The Witness. A year and a half.

Q. In what capacity are you so employed?

A. I am employed as a project engineer.

Q. Mr. DeBickish, do you have an opinion as to the attachment to the Constitution and the principles of the Constitution of the United States on behalf of both of these petitioners?

Mr. Sullivan. Objection, your Honor.

The Court. Read the question.

(Question read.)

The Court. He may answer yes or no.

A. I answer Yes.

Q. And what is your opinion?

Mr. Sullivan. Objection, your Honor.

The Court. Objection sustained.

Q. Mr. DeBickish, since your arrival in the United States in January of 1957, have you seen Dr. and Mrs. Berenyi at any time?

A. Yes, sir, I did.

Q. How often?

A. Let me see: we lived in their home for a week or so in 1958. I have seen them—they came down to visit me in Miami while I was living down in Miami and after we

moved up to the New York area and while they were living in New Jersey I have seen them about weekly or bi-weekly for a period of until they lived in New Jersey. I don't remember exactly when did they leave for Massachusetts.

Q. Well, in the past year how often have you met them?

A. Very frequently. Weekly, twice a week, three times a week.

Q. You are close friends?

A. Yes.

[fol. 131] Q. And the year before that, sir?

A. Pardon me?

Q. How about the year before that?

A. Not too often because at that time we lived in the New York area.

Q. But you did see each other?

A. Whenever we came up to the Boston area we have visited them.

Q. Has anything ever been said or done by either of the two Doctor Berenyis to your knowledge to indicate to you that they were not attached to the principles of the United States Constitution?

A. No. I have never heard anything like it.

Mr. Spar. I have no further questions.

The Court. Any questions?

Cross examination.

By Mr. Sullivan:

Q. Doctor, did you ever attend the University of Budapest Medical School?

A. No.

Q. Then you wouldn't know anything about the activity of the petitioners at the University of Budapest Medical School?

A. No, sir.

Q. Doctor, in this period you speak of in Hungary did either of the Berenyis know about your arrest at that time?

A. Certainly.

Q. When you talk about them being anti-Communist or when they spoke about their being anti-Communist, did they know that you were anti-Communist at the same time?

A. Certainly. They wouldn't have dared to speak any other way. It would have been very dangerous for them.

Q. Did you know that they were in the Hungarian Army?

A. Certainly.

Q. You knew that. Did you ever find out whoever informed on you when you were picked up in exile?

A. They didn't need any information because the Radio Free—probably the personnel of the Radio Free Europe was well known for the Hungarian Secret Police.

[fol. 132] Q. How would you be identified? Someone would have to be identified before you—you would have to be identified as the brother of so and so?

A. Oh, I get a subpoena to come to the police department to Budapest.

Q. Would you say that either of the petitioners were the ones who informed on you?

A. Why would they? They couldn't.

Mr. Sullivan. No more questions.

The Court. Any other questions?

Mr. Spar. No, sir. Thank you very much.

If your Honor pleases, we have three short witnesses. We should be able to conclude very shortly. May I ask that Mr. Sanetsky continue with these three short witnesses.

CHARLOTTE RAY, sworn.

Direct examination.

By Mr. Sanetsky:

Q. Mrs. Ray, would you speak up loudly so that the Court can hear you and so that I, standing back here, can

hear you. If there is anything you don't understand, would you please make that known?

A. Okay.

Q. May we have your full name and home address?

A. Mrs. Charlotte Ray, 1549 Townsend Avenue, Bronx.

Q. And you are a housewife?

A. Yes.

Q. And you are the mother of Magdalena Berenyi?

A. Yes.

Q. And the mother-in-law of Dr. Kalman Berenyi?

A. Yes.

Q. Mrs. Ray when did you leave Hungary to come to the United States?

A. 1948, November 21, we left Hungary and we arrived 1948.

Q. In whose company?

A. With my husband, Josef and two daughters, Susan and Judy.

[fol. 133] Q. Were they both—

A. One was seven and one was twelve.

Q. At that time did your older daughter, Magdalena, also make application for a Hungarian passport to leave Hungary and come to the United States with you?

A. Yes, but she can't come because she was over 18 years.

Q. And her request was denied by the Hungarian Government?

A. Yes.

Q. Are you a citizen of the United States?

A. Yes, 1954, November 11. I had my citizen paper in the Southern District, New York.

Q. Federal Court?

A. Yes.

Q. And is your husband and your two younger daughters also citizens of the United States?

A. Yes.

Q. And did they also receive their citizenship at the same time?

A. The same time, yes.

Q. Now until you left Hungary in 1948 did Magdalena live with you?

A. Yes.

Q. And to your knowledge was Magdalena up to the time she lived with you a Communist or a member of the Communist Party?

A. No.

Q. Was she ever to your knowledge affiliated with any organization which espoused the doctrines of Communism?

A. No.

Q. Did your daughter ever advocate any of the doctrines of international Communism?

A. No.

Q. What business was your husband in while you were in Hungary?

A. We had a big manufacturing textile business.

Q. And did he have any other interests?

A. Oh, yes. I had for my side a business too, and my husband, well known. At that time very dangerous class of peoples there, and we were very dangerous situation. We must go out very fast from the Country.

Q. Would you tell me what happened to your husband and your husband's business at the time you left the country.

A. They took away.

[fol. 134] Q. They were nationalized by the Government?

A. Yes.

Q. Did you receive any compensation from the Government?

A. Never.

Q. While you were living in Hungary and your daughter was living with you did you have occasion in the household to discuss the political situation in Hungary?

A. Not always we hate it.

Q. Well, Madam, during these discussions could you tell me what was said in your home?

A. Everything said. Said it the worst thing that could—who worked for their life and who had everything and they took everything away. We were always closed doors and we listened to the Free Europe Radios and we want listen to everything and we have the housemaid, sent her out from the house that we would know something that happened outside from the world. Terrible place.

Q. Was your daughter Magdalena close with you and your husband?

A. Very close.

Q. Would I be correct in saying that you and your entire family not only hated Communism but had every reason to hate Communism?

A. Yes, every reason.

Q. Now when you left Hungary in 1948, did you make any provision for someone to live with and take care of your daughter?

A. Yes.

Q. And what did you do in that respect?

A. Oh, we had a nice apartment and we asked my husband's sister, Mrs. Farkas—she don't have children, just two peoples—to come over to our apartment and we want leave her then. We must go out from the country very fast and she come over and she live with them together and they live together.

Q. In other words, after you left, Mrs. Farkas and her husband lived with Magdalena?

A. Yes. Right after the next day, next couple of day—I don't know.

Q. Now is it a fact that you were not reunited with your daughter until December of 1956 when she came to the United States?

A. Yes.

[fol. 135] Q. During the interval did you write to each other often?

A. Oh, every week.

Q. And at that time when your daughter came to the United States in December of 1956 with your husband, Kalman Berenyi, was that the first time that you met him?

A. Yes, Kalman.

Q. And after they came to the United States, how often did you see them?

A. The first two weeks they were in our house. Then they went their first-year internship in Coney Island and every free time they would come to our house.

Q. Coney Island Hospital?

A. Yes.

Q. It is the Borough of Brooklyn, is that correct?

A. Yes.

Q. And you live in the Borough of the Bronx?

A. The Bronx. Every free days or free afternoons when they went off, they come home to us, sleep over in our house or the weekend. When they were nothing duty, they come over and they sleeped over.

Q. And in 1958 when they were both working in hospitals in New Jersey how often did you see each other?

A. Every Sunday.

Q. And since they have moved to Boston in July of 1959, how often have you had occasion to visit with or see both your son-in-law and your daughter?

A. Four or six weeks.

Q. You mean once?

A. Four or six weeks, but we speak always three or four times weekly on the telephone.

Q. In other words, they visit you quite frequently in New York?

A. Very much.

Q. And you come to Boston?

A. Yes, very much.

Q. Mrs. Ray, during these frequent visits that you have had with each other has it been a natural thing for you to discuss the state of affairs back in Hungary?

A. Oh, yes.

Q. And I assume that you have done that quite often. As a matter of fact, you have relatives that are still there?

A. Yes.

[fol. 136] Q. Kalman's relatives that are still there?

A. Yes.

Q. Could you tell me what if anything either Magdalena Berenyi or Kalman Berenyi has said in your presence with respect to their feelings about the Communist Government in Hungary?

A. They said, "This is no life in Hungary. This is no freedom. This is not for human beings, not the people who want to have individual"—I can't explain it so good in English; but they can do anything they want, everything, all of that all of that. They can do nothing for themselves and everything was always they must look behind them that somebody is not behind them, and they won't do something against them. We live in the United States and we are very much not fear of them.

Q. Mrs. Ray, during this time had you heard your son-in-law and your daughter express their feelings about living in the United States?

A. Oh, I wish I could explain how they explained it to me, how they like to be here.

Q. Explain as best you can what they have said in your presence with respect to their feelings toward the United States?

A. Everything what they expect, what somebody expect from their life, they expect to find everything here. The best things what they want they have here, freedom. They can have education. They can go forward. Everything. What should I say? Everything.

The Court. Any questions?

PAULETTE FARKAS, sworn.

Direct examination.

By Mr. Sanetsky:

Q. Would you please state your full name and home address?

A. Paulette Farkas, 1549 Townsend Avenue in Bronx, New York.

Q. I notice from your adress that you live in the same building with the previous witness, Mrs. Ray?

A. Yes.

[fol. 137] Q. Do you live in the same apartment?

A. No.

Q. You are related to Mrs. Ray, is that correct?

A. Yes.

Q. You are her sister-in-law?

A. Yes.

Q. And you are also related to the petitioner, Magdalena Berenyi?

A. Yes.

Q. You are her aunt?

A. Yes.

Q. When and where were you born, Madam?

A. Czechoslovakia, 1907, January 5th.

Q. And is it a fact that you came to the United States in 1956?

A. Yes.

Q. And prior to that time were you living in Hungary?

A. Yes.

The Court. May I interrupt. Is the expected testimony of Mrs. Farkas substantially the same as that given by Mrs. Ray?

Mr. Spar. Yes, your Honor.

Mr. Sanetsky. Yes, your Honor.

The Court. So it would be cumulative?

Mr. Sanetsky. Perhaps it would be. The only thing is that it covers a subsequent time period because from the

time that Mrs. Ray left Hungary in 1948 Mrs. Farkas resided with first Magdalena and then with the married couple after they were married.

The Court. Will you cover just that period then.

Q. Subsequent to your sister-in-law and other members of her family leaving Hungary in 1948 did you live in their apartment?

A. Yes.

Q. And during that time was Magdalena Berenyi living with you?

A. Yes.

Q. And was this during the time that she was going to medical school?

A. Yes.

[fol. 138] Q. As a matter of fact, did you live with Magdalena Berenyi until she was married in 1952 in this same apartment?

A. Yes.

Q. And after her marriage in 1952, is it a fact that Dr. Kalman Berenyi moved into the apartment and lived there also?

A. Yes.

Q. And is it also a fact that you lived with both Doctors Berenyi in that apartment from 1952 until 1956 when they left Hungary?

A. Yes.

Q. And did you and your husband leave Hungary with both Doctors Berenyi?

A. Yes.

Q. And did you accompany each other on your trip to the United States?

A. Yes.

Q. And you arrived here at the same time?

A. Yes.

Q. Since when did you know Dr. Kalman Berenyi?

A. Since 1950.

Q. And from 1950 until 1952 when he married Magdalena did you see him frequently?

A. I see several times. He came in our house.

Q. He visited the house after and he was escorting his future wife?

A. Yes.

Q. And during the period 1948 to 1956 did you have occasion to have conversations with both Magdalena and Kalman with respect to their feelings towards Communism and the Hungarian Government?

A. Of course. Several times.

Q. And could you tell us what in substance was said by each of the petitioners?

A. The conversation was all the time and every time is the Communism, "I don't like it. We don't like it, and we would like find out how we can have our life change, to go away from here, to find that freedom to do everything what we wanted, what in this country." I was worker also. I know how much we suffer from this regime, and we would like do everything to go from there here. Before the revolution time, we can't think is going to be a revolution.

[fol. 139] Q. Did both Dr. Kalman Berenyi and Magdalena Berenyi both express these anti Communists views to you?

A. Exactly same.

Q. Continuously?

A. Yes.

Q. Did they ever say anything in your presence of a pro Communist nature? Did they ever say anything for Communism?

A. No, never.

Q. You went across the border together?

A. Yes.

Q. Do you recall what the reactions of the Berenyis were when they crossed the border?

A. I remember and I don't forget never. When the first step was in Austrian border, Magdalena Berenyi, she kissed the earth. This was the first, and we cried. Every-

body was with us. She was and he was and we was so happy we are in a free country, and we have hope coming to America. I have also relative, her parents, and this was all, best wish what we can wish.

Q. And did you become a naturalized citizen of the United States?

A. Yes.

Q. In the Southern District of New York in 1962?

A. Yes. My husband also.

Mr. Sanetsky. Thank you. No further questions.

Mr. Sullivan. No questions, your Honor.

The Court. You are excused.

Mr. Sanetsky. Your Honor, I have one more witness who would be just be cumulative, whose testimony would be cumulative at this point.

The Court. Who is he?

Mr. Sanetsky. His name is Harry Flam. He is the brother-in-law of Dr. Magdalena Berenyi. He is married to one of the younger sisters, knows both of the petitioners since they have been in this country since 1956. If the Government would so stipulate—

[fol. 140] Mr. Sullivan. Government stipulates, your Honor.

The Court. Very well.

Mr. Sanetsky. —that his testimony would be in substance the same as those of the two previous witnesses with respect to the good moral character, anti Communist feelings, and the attachment to the principles of the United States Constitution on behalf of both petitioners.

The Court. Well, what is his name again?

Mr. Sanetsky. Harry Flam, F-l-a-m, and his address, sir?

The Court. Yes.

Mr. Sanetsky. 1549 Townsend Avenue, Bronx, New York.

The Court. Any other witnesses?

Mr. Sanetsky. That is all, sir.

The Court. Do you rest?

Mr. Sanetsky. Petitioners rest.

The Court. Any rebuttal witnesses?

Mr. Sullivan. No rebuttal witnesses, your Honor.

The Court. All parties rest?

Mr. Sullivan. Right.

The Court. Do you wish to be heard? Do you wish to argue now?

Mr. Sullivan. Your Honor, the Government's motion for denial of these petitions still stands.

The Court. What?

RENEWAL OF MOTIONS AND RULINGS THEREON

Mr. Sullivan. The motions for denial of these petitions, both petitions in the case of Kalman J. Berenyi and Magdalena Berenyi. The Government witnesses have testified that the male petitioner was a self-admitted member of the Communist Party; that he did teach and advocate Communism; that he did attend Communist Party meetings and as a result thereof, has failed to testify truthfully and, therefore, has failed to establish good moral character as required by the Immigration Law.

[fol. 141] Lastly, he has testified falsely in order to obtain a benefit under the Immigration and Nationality Laws.

With regard to the female petitioner, Magdalena Berenyi, she has also failed to establish good moral character as required by the Immigration and Nationality Laws in that she did not testify truthfully and frankly and honestly in connection with her petition for naturalization. That is it, your Honor.

The Court. I will hear you, Mr. Spar.

Mr. Spar. If your Honor pleases, the petitioners respectfully move this Court that they both be duly admitted to citizenship and to the United States on the ground that they have sustained the burden of proving pursuant to Sections of the Immigration and Nationality Act of 1952 contained in Title 8 of the United States Code that they are both eligible for citizenship in this country.

As I understand the Statute, they must sustain the burden of proof that they are not ineligible for citizenship and that they have by a great preponderance of all the credible evidence heard before your Honor during the past two days established that they are both definitely an asset to the United States and definitely eligible for citizenship in this country.

The Court. What section are you referring to or sections?

Mr. Spar. Your Honor, I am referring, sir, to Section 1427 of the United States Code. May I, sir, read some of the provisions thereof?

The Court. No. It won't be necessary. Any particular subdivisions?

Mr. Spar. Yes, sir. Section 1, Section (a), sir.

The Court. (a)?

Mr. Spar. Yes, sir. Section (e) subdivision (e).

The Court. (e) as in Edward?

[fol. 142] Mr. Spar. That is right, sir. Relating to determining whether the petitioner sustained the burden of establishing good moral character and other qualifications for citizenship specified in subsection (a) of this Section, the Court shall not be limited to the petitioner's conduct during the past five years preceding the filing of the petition but may take into consideration as a basis for such determination the petitioner's conduct and acts during any time during said period.

Under subsection (a): No person, except as otherwise provided for in this Title, shall be naturalized unless such petitioner immediately preceding the filing of his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, et cetera.

Subdivision 3, paragraph 3: during all the period referred to in this subsection has been and still is a person of

good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

And I submit to your Honor that the only provision of the law, as I read it, and it is in Section 313 of the Immigration and Nationality Act of 1952 which corresponds to Section 1424 of Title 8, United States Code, subdivision (a) (2) thereon states as follows, subdivision (a) first:

Now withstanding the provisions of Section 405 (b) of this Act, no person shall hereafter be naturalized as a citizen of the United States (1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized Govern-
[fol. 143] ment, or (2) who is a member of or affiliated with (A) the Communist Party of the United States (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section subsidiary, branch, affiliate, or subdivision of any such association or party—

Now, your Honor pleases, the entire Section is replete with this information, and in subdivision (c) there is a provision that sets forth—and I think it material to note in the same law: the provisions of the Sections that I have just read to your Honor "shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this Section, notwithstanding that at the time the petition is filed he may not be included within such classes."

As I understand and read this particular subdivision, there would be necessary a finding by the Court to make an individual petitioner ineligible for citizenship that within a ten-year period prior to the filing of the petition for

naturalization they were a member of the Communist Party or sought to teach or advocate the overthrow of the United States Government by force and violence or did any of the other items which are proscribed in subdivision (2) of the Immigration Act of 1952, Title 8, United States Code 1424.

In this case here there hasn't been one scintilla of evidence submitted that Dr. Kalman Berenyi—and I refer to the male petitioner first—was within the ten-year period prior to [fol. 144] the filing of this petition for naturalization, January the 30th, 1962—and that is the date, sir—was a member of the Communist Party or advocated or participated in any of the acts which are prohibited under the Statute.

At very most if we were to take—and we can't take it as true—but assuming the truth of any of the statements made by Dr. Kury, he testified that Dr. Berenyi said at a meeting that "I have been a member of the Communist Party in 1945" when he was but 17 years of age, was 16 years of age. There isn't one scintilla of evidence of membership in the Communist Party, if you call it evidence at all, and it certainly goes way beyond the ten-year period as provided for in this Statute.

Dr. Kury did not testify to anything else concerning Dr. Kalman Berenyi other than the fact that he had made that one statement in the year 1948 or 1949 and that was the end of it, his entire association with Dr. Kury and Dr. Berenyi.

There is, of course, no corroborative evidence of any kind offered or submitted by the Government.

As far as Dr. Halasz was concerned, he testified as to nothing. He just testified that he attended some meeting and he didn't know if they were closed or open meetings.

Now Dr. Berenyi in the Record here before this Court has admitted that "I have attended open meetings. I was called to them."

And I state to your Honor that in the exhibits before your Honor he has admitted to Mr. Sullivan and to other officers of the Immigration Service: "I attended these meetings. They were required of me as of anyone else, and I was

there. But that didn't make me a Communist. I never participated in any Communist functions or meetings."
[fol. 145] And Dr. Halasz confirmed his own statements that he never said a word at any of these meetings.

Now I submit to your Honor that two people here are seeking their citizenship. They have presented very credible evidence of people who are credible and believable, as well as themselves, that they are not now nor have they ever been Communists or affiliates of the Communist Party.

I might say with reference to Dr. Magdalena Berenyi there is no claim in the recommendation by Mr. Sullivan that she denied naturalization on the ground that she is a member of was ever a member of the Communist Party. As I read the recommendation of Mr. Sullivan, it is simply one that she failed to tell the Immigration Service and the Court or the designated examiner that her husband was a member of this Party. First, they assumed this membership; secondly, they assumed that she had knowledge of it.

Now nowhere in the testimony that was adduced here by the Government was there ever a claim even made. We can't even go on that basis of any claim that she had knowledge of any alleged pro Communist activities on the part of her husband. It must be remembered that they weren't married until June of 1952 when they were about to graduate from medical school; that they only kept company for a period of two years or so before that time; that they attended the same classes with 600 other students. I think it is most farfetched and unreasonable on the part of the Immigration and Naturalization Service to burden her with the alleged knowledge that her husband allegedly was a member of a Communist Party organization in 1945 or in 1948 or at any other time and to say that that knowledge is implied into her is highly untenable and wrong.
[fol. 146] I submit to your Honor that both of the petitioners have appeared before your Honor. Your Honor has had ample opportunity to judge their character, their qualifications, their demeanor and their actions before this Court; and it is for your Honor to determine at this time, based on the Record before you and before this Court, that

they are quite eligible and should be admitted to citizenship in this country.

The Court. Both petitions are taken under advisement.

(Whereupon, the trial was closed.)

Reporter's Certificate (omitted in printing).

[fol. 147] GOVERNMENT'S EXHIBIT 1-A

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
219 South Dearborn Street
Chicago, Illinois 60604

A10 927 995
A10 927 996

Report of continued hearing held in connection with the petitions for naturalization, numbers 1500-P-351466 and 1500-P-351468, filed by Kalman and Magdalena Berenyi in the United States District Court, Boston, Massachusetts, held in the Federal Building, 219 South Dearborn Street, Chicago, Illinois, on September 17, 1964.

PRESENT:

Paul Halasz, Witness
Charles Spar, Attorney Representing Petitioners
Samuel D. Myers, General Attorney for Nationality
Vivian Barger, Stenographer

General attorney for nationality to witness:

Q. Mr. Halasz, let me inform you my name is Samuel Myers. I am a General Attorney of the Immigration and Naturalization Service, Department of Justice. I am authorized under Section 335(b) of the Immigration and Nationality Act to take testimony in any way touching upon or connected with the eligibility of any petitioner for naturalization. Drs. Kalman Berenyi and Magdalena Berenyi have filed petitions for naturalization in the United States District Court in Boston, Massachusetts. I intend today to take testimony from you concerning their eligibil-

ity, for naturalization. You are informed that you are entitled to be represented by a lawyer at your own expense [fol. 148] and of your choice is you so desire. Do you understand that, Dr. Halasz?

A. Yes.

Q. Do you desire to be represented by a lawyer here today?

A. No. I understand I am a witness.

Q. That is correct. If at any time during this hearing you desire to have a lawyer represent you, you tell me and I will halt the proceedings and continue the case to give you an opportunity to obtain a lawyer to represent you. You will be testifying under oath. You understand that failure to tell the truth can result in your committing perjury for which there is a sentence of five years in jail or/ and a $5,000 fine. Your statements are being taken down and will be made a part of the record in the petitions for naturalization, which means in open court.

Q. Under these conditions are you prepared to go ahead today?

A. I am.

Q. I want to inform you the petitioners are today represented by counsel, Attorney Charles Spar is here.

General attorney for nationality to attorney:

Q. Counsel for the record are you prepared to go ahead with the proceeding today, cross-examining if you desire?

A. Yes. I want to state for the record that both petitioners received notices of this preliminary hearing at their home in Boston, Massachusetts but because of the distance involved they have chosen not to be present at this preliminary hearing. I am, however, duly authorized to act as their counsel in this proceeding and I am ready to proceed.

General attorney for nationality to witness:

Q. Would you stand, raise your right hand to be sworn. (Complies) Do you solemnly swear that the testimony you

are about to give will be the truth, the whole truth, and nothing but the truth, So Help You God?

A. I do.

Q. Would you state your full name for the record?

A. Paul Halasz.

[fol. 149] Q. What is your occupation?

A. Physician and surgeon.

Q. What is your present address, doctor?

A. 300 E. Embert Place. Peoria, Illinois.

Q. Of what country if any are you a citizen?

A. United States of America.

Q. How did you obtain your citizenship, sir?

A. I petitioned for citizenship and I was sworn in.

Q. By that do you or do you not mean you were naturalized?

A. I was naturalized.

Q. When and where were you naturalized?

A. Peoria, Illinois.

Q. What court was that, if you know?

A. United States District Court. I can't remember the Judges name.

Q. Is it not true you were naturalized November 9, 1962?

A. That is right.

Q. Where were you born?

A. Hungary. Mezokaszony. Actually when I was born it was in Czechoslovakia, which became Hungary again.

Q. What if any were your occupations in Hungary?

A. I was a student, then medical student, and again physician.

Q. When did you become a medical student, approximately when was that?

A. Approximately 1949.

Q. When did you become a physician?

A. 1955.

Q. When did you leave Hungary?

A. 1956, second of December.

Q. You stated that you were a medical student?

A. Yes, sir.

Q. Where did you go to medical school?

A. University of Budapest.

Q. Where was that at?

A. In Budapest. Previously they called it Pasmany-Peter University.

Q. Did you ever see any military service while in Hungary?

A. Yes.

Q. What service were you a member of?

A. Well, they called us in medical students, they called us to the army. We served under military regulations and went to medical school. After we finished medical school [fol. 150] they put us to different unit where we served as physicians.

Q. When did you first go in the army?

A. Since I believe it was 1950 or 1951. 1950 or 1951.

Q. Did you volunteer or were you inducted?

A. Well, let's put it this way, it wasn't actually volunteer. The same way I be a member of the Communist Party. I got order to send volunteer paper. I send in paper that I want to join them. Then a certain time went by, I got a letter I have to join them. The same time of call in anybody must get into the army. As far as I remember.

Q. You stated a few moments ago you went into the army then into medical school in the army?

A. I was in the medical school then they called me into the army while I was in medical school.

Q. How long had you been in medical school when they called you into the army.

A. I believe in my second year when they called me. I can't recall exactly.

Q. How long after that occasion that you were called to the army did you spend in medical school?

A. I believe four more years in medical school. Four or five years in medical school.

Q. You stated after finishing medical school you then went to serve in some unit?

A. That is right.

Q. Would you tell me the units you served with?

A. First I was in the Jaszbereny artillery unit.

Q. Where was it located?

A. In Jaszbereny.

Q. That is a town?

A. Yes.

Q. Where about is the town located approximately?

A. I believe it is southeast from Budapest about 90 miles.

Q. In this town what unit were you serving with?

A. With artillery unit.

Q. Do you recall the name of this unit?

A. Just artillery unit was the name.

Q. Can you tell me approximately the size of the unit. Was it a battalion or regiment?

A. It was a battalion.

[fol. 151] Q. Did you see any other military service besides with this artillery battalion?

A. Yes, from there I was under orders exactly before the revolution in Hungary to go to Aszod to assume there my duties as physician with an infantry unit.

Q. Where was this town Aszod?

A. It was about 40 or 50 kilometers from Budapest.

Q. Which direction?

A. East.

Q. Do you recall the name of this infantry unit?

A. Infantry unit of Aszod. That is all.

Q. What was its size, the unit's size?

A. Battalion.

Q. When was it you left medical school, what was the year?

A. 1955.

Q. When did you transfer from this artillery battalion?

A. 1956, somewhere around there, of October. Actually I did not assume duty in Aszod because the revolution. I was detained with the artillery battalion.

Q. So you never joined the infantry battalion?

A. I never joined them.

Q. In this post you assumed after you left medical school what was your job?

A. Just take care of the sick. Take care of the injured.

Q. Were you a supervising physician?

A. No.

Q. What was the highest rank you obtained?

A. First Lieutenant.

Q. During the time you were in Hungary after you became a physician were you a specialist?

A. No.

Q. Could we term you a general practitioner?

A. That is right.

Q. At this post you assumed after leaving medical school, how many physicians if any were there besides yourself?

A. There was another physician.

Q. What was his rank?

A. First Lieutenant if I recall correctly.

Q. Was he your supervisor?

A. Yes.

[fol. 152] Q. Dr. Halasz, I would like you to tell us now any organizations you ever belonged to while you were in Hungary?

A. Well the organization of the university which was MEFESZ which every student had to belong and I was a member of the Communist Party and probably some other small things, some organization you have to belong when you were in Hungary but I can't recall any others.

Q. Give yourself a chance to think.

A. Maybe you can call it Disz, but I can't remember if really was a member or not. Usually every student they get us in.

Q. Was there any other organizations besides what you have stated?

A. The Hungarian Communist Party.

Q. Besides what you stated?

A. No.

Q. Dr. Halasz, have you or have you not ever believed in Communism?

A. I never believed in Communism.

Q. What do you mean when you say Communism, how would you define Communism?

A. I don't understand you.

Q. You stated that you never believed in Communism. What do you mean when you say Communism. When you answered what were you thinking about?

A. Party, what they stand for, what they are doing.

Q. By Communism do you or do you not mean government ownership of factories and businesses?

A. Yes.

Q. By Communism do you or do you not mean that only one party is allowed to hold office and run the country?

A. Yes.

Q. By Communism do you or do you not mean that the rulers of the country want to take over other countries, including the United States, by force and violence if they have to?

A. Yes.

Attorney: At this time I want to object to the entire line of questioning of the witness on the ground it is misleading and suggestive. You are testifying and not the witness.

[fol. 153] General Attorney For Nationality: Objection overruled.

General Attorney For Nationality to Witness:

Q. Dr. Halasz, you stated before that you were a member of MEFESZ?

A. That is right.

Q. Where were you a member of this organization?

A. In Budapest medical school.

Q. When were you a member?

A. From the time I started as a medical student. 1949 up to a certain, I don't know what year, when they said members of the Communist Party does not have to be a member of the MEFESZ. I don't know exactly when it was, two or three years later.

Q. Were you an officer of this organization? By that I mean president or secretary?

A. No, I never was president or secretary but they gave me officer because they try to be like the officer replacement, who will be officer in that but most of them were middle children, farmer children and some of them came from the intelligent middle class. And I come from, my father was in the middle class. I was a member of the Communist Party they gave me a post as physical education. I was an active sport myself. So I hold that office for about two months. They said you are not qualified and kicked me out.

Q. What was the name of this post?

A. If some of the students want to go and play somewhere then I try to get into a team or somewhere. Students had a team we go play soccer or tennis, whatever we could. That is all I had to do, or make chess parties. Play chess.

Q. Besides this office or post did you hold any other office or post in this organization?

A. No.

Q. Was this organization or was it not a part of the school itself, the medical school?

A. Yes, everybody was member of the medical school.

[fol. 154] Q. That is not the question I am asking, was the organization run by professors or part of the school itself?

A. No, it was run by the students.

Q. Was there dues involved in this organization?

A. I never had to pay.

Q. Did you get symbols or emblems to show you were member of this organization.

A. I never had any.

Q. Did you or did you not ever have any document to show you were a member?

A. I believe I had a book for one month. After that because I was a member of the Communist Party they have said it is enough. If I recall correctly. I can't remember this very well. I don't want to perjure myself.

Q. Can you tell me anything about this book if there was such a book?

A. I can't tell you anything. I can mention that if you were a medical school automatically you were a member in that organization.

Q. How did you happen to get into this organization?

A. Into the MEFESZ?

Q. Yes.

A. Automatically after you were a medical student you were a member. There were no questions asked.

Q. Did you or did you not have to apply for signing some certificate?

A. No, nothing like that.

Q. How then did you find out you were a member of this?

A. They told us.

Q. Who told you?

A. Somebody came from a higher class or some officer from the organization came us and said automatically you became a member of the MEFESZ.

Q. Was there any room for objecting?

A. No. There was no room for objecting. It was under the leadership of the Communist Party because whoever was member of the officer group they were everyone of them member of the Communist Party. Had to be a member. If you understand what I mean. Therefore they get line from the Communist Party itself.

[fol. 155] Q. You stated just now this organization was under the jurisdiction or run by the Communist Party, is that right?

A. Yes.

Q. How did you know that?

A. I was a member of the officer group and I heard them talking, and the line what they give us, what we have to do when for example it was the first of May, MEFESZ organization, whole thing, this leadership of the Communist Party. All the students had to appear before the stands.

Q. You say you knew that MEFESZ was under the domination of the Communist Party because the organization helped run the May Day celebration?

A. Not only that, it actually run the MEFESZ under the leadership of the Communist Party in the university.

Q. You also said that when you became physical education officer of the MEFESZ you heard some talk, officers talk about the party line?

A. Yes.

Q. Did anyone ever tell you that MEFESZ was run by Communist Party?

A. No, it was an obvious thing because there was certain MEFESZ officer members, I would say the secretary, who was a member also of the Communist Party officer group. If you know what I mean.

Q. How do you know this man was a member of the Communist Party, this secretary?

A. Because when I attended Communist Party meetings she was sitting right with the officers, where officers usually sit. As secretary of the MEFESZ she was already a member of the Communist Party officers. They had a place for her, I don't know, and this made me believe they gave her the line what the MEFESZ had to do.

Q. You just said that you saw the secretary of this MEFESZ at Communist Party meetings which you attended as a member of the Communist Party?

A. Yes.

Q. Were these Communist Party meetings closed? That is could other people besides Communist Party members attend these meetings?

A. I can't actually say what they did. I believe it was [fol. 156] closed. Several times I have seen visitors who was in the Communist Party because they were not a member of the Communist Party because they were invited to attend meetings of the Communist Party meetings they can then suggest the application for to be a Communist Party member.

Q. So then you couldn't really say for sure this lady who was secretary of the MEFESZ was a Communist Party member, could you?

A. Yes, I have seen her party book. Not only that, I know she was sent as a member of the Communist Party to certain young, they have this young people come together in different country. She was sent out as a representative of the University of Budapest to Russia or Bucharest. And nobody could get there if she wasn't in the Communist Party.

Q. That is an assumption, isn't it?

A. I would say it is an assumption but I have seen her party book. That I remember.

Attorney: Mr. Myers, may I ask are we discussing the petitioners for naturalization? If so, there has been no attempt of any kind of identification. Are you referring to the female petitioner? I want to say this. I am going to note my objection to the entire line of questioning. I believe you are in the abstract, that you are not in the issues of the petitions for naturalization of two petitioners for naturalization.

General Attorney For Nationality: Objection overruled.

General Attorney For Nationality to Witness:

Q. You say you saw this secretary of MEFESZ Communist Party book. Could you describe it for us?

[fol. 157] A. Let's see. It was a red book. It was the same like I had or anybody else had.

Q. Just describe what you saw of this book?

A. It was the top of it the insignia of the Communist Party.

Q. What was the insignia?

A. I believe the Hungarian flag and the red, United States has the same thing in white. The star. The five angle star, red five angle star in the top. I believe there was something coming across which represented some revolution. I don't remember if there was a hammer. Inside she had the name on the top. Her age or birthday, where she was born, birthplace, I don't know what else.

Q. What color was the book?

A. Red.

Q. When you say red that would be the cover or the pages?

A. The cover.

Q. What were the pages, what color?

A. I can't think of it.

Q. Did you or did you not ever see her with some emblem?

A. The same emblem she had emblem there secured in the button.

Q. What did that look like?

A. The insignia looks like red, white, and green and in the middle I believe was the red star and the wheat representing like, I don't know what kind of wheat. I can't recall, it was so long ago. I haven't seen one since.

Q. You say wheat you mean some kind of vegetable?

A. No, no, you make bread from it.

Q. Wheat?

A. Yes.

Q. Did she wear this emblem also?

A. She always wore it and I can recall.

Attorney: Again I want to state unless you attempt to identify either one or both of the petitioners I say you are in the abstract. I believe the nature of the examination is completely improper. I think the examination is absolutely [fol. 158] improper. I object to the entire line of this examination. You are talking to this witness in the abstract.

General Attorney For Nationality: Objection is overruled.

General Attorney For Nationality to Witness:

Q. You state you saw this woman's, this secretary of MEFESZ, you saw her Communist Party book?

A. Yes.

Q. What was the occasion you saw the book?

A. Communist Party meeting, or she took that out or reached for her handkerchief or something.

Q. How often did you see this woman?

A. I would say through a six month period. I have seen her once every month at least. One month period I have seen her once every month because of the meeting. I had to be there as a member of the officer of the MEFESZ and after that I have seen and talked to her in certain Communist Party meetings. I can't recall how many times.

Q. We have been discussing your membership in MEFESZ during the hearing. You stated you believed it to be a Communist run organization?

A. Yes, it was.

Q. Did you know or believe this prior to the time you went to this organization?

A. You mean to be a member of the MEFESZ?

Q. Did you believe it was Communist dominated before you became a member.

A. I don't know if it was Communist dominated before I became a member.

Q. Did you believe it was?

A. I did not know. I had no belief.

Q. Did you or did you not make any attempt to quit MEFESZ when you found out?

A. I was afraid to quit MEFESZ. If I quit I would be kicked out of the medical school.

[fol. 159] Q. What if anything made you believe you would be kicked out of medical school if you quit MEFESZ?

Attorney: Mr. Myers, the witness has testified already to the fact that you became a member of the MEFESZ upon being admitted to school. That is all he said. He had to be a member of MEFESZ in order to go into medical school. I think your inquiry is completely unnecessary. I object to it. Things you said, it is a repetition of the same thing.

General attorney for nationality: Objection is overruled.

General attorney for nationality to witness:

Q. You stated you were a member of the Hungarian Communist Party?

A. Yes.

Q. What was the name in Hungarian of the organization you termed the Hungarian Communist Party?

A. At that time first it was the Hungarian Communist Party.

Q. What is the name?

A. Magyar Komunist Part, then I don't know when they change name it became Magyar Dolgozok Partja.

Q. What was the name of the organization when you were a member of it?

A. Both. I start out as Communist Party then it became that.

Q. When and where did you join this organization?

A. I joined the organization I believe in 1947 or 1948, I believe so. In Gyongyos.

Q. What was your occupation at that time?

A. I was a student in high school.

Q. How old were you at this time?

A. I must have been 17 or 18 years old.

[fol. 160] Q. Did you yourself go someplace or do something to obtain membership?

A. No, that was, my father was mayor in that town. He was appointed by the government. At the time they made organization for the children to go into dormitory from where they can go to school. My father died when I was two, my mother was killed during the war. It was in Eger. And while we were there suddenly the government came out and said we take this over. They took that over and made a government organization out of it. Then because of that I had to leave. I played soccer and I went to Gyongyos because they told me I can get into government work, place where I can stay where I go to school. So I went to Gyongyos. There were this boys after I was there a month or two, they said why don't you join

the Communist Party? I said I have no desire to join the Communist Party. I am living, I am studying. They came to me about a month later. They said if you don't join you can't stay here. I said if that is all the cause I can't stay, I have to join because I had no other place to go. I couldn't continue my studies if I don't join. So I had to join. I join the Communist Party.

Q. Did you ever make any attempt to quit the Communist Party?

A. After that I didn't pay dues for more than a year. But they came after me and said you have to pay it. I just had to pay it. There was no other way. If I didn't then that is it. You are out of the Communist Party and can't come through school. I was forced to continue.

Q. Who said you couldn't go to school?

A. One of the Communist Party members. I know how many people suffer for that. I just decided to pay it and keep on studying.

Q. Did you ever personally know of anyone who attempted to quit the Communist Party and was thrown out of school?

A. I don't say she was thrown out of school. My sister. [fol. 161] Q. What happened to her?

A. She was working as a stenographer in the police station. She was thrown out of a job because she wanted to quit the party. She was thrown out of the party and out of her job. I believe her husband was thrown out of his job also.

Q. You said you stopped paying your dues for about a year?

A. Yes, sir.

Q. I take it then there were dues involved in the Communist Party?

A. Yes.

Q. Approximately how much and how often?

A. I think we had to pay once a month about two forint.

Q. About how much is a forint in American money?

A. You have to break it down to pennies.

Attorney: May I call your attention I am here from New York. I don't want this matter to go over another day. I concede for the record that he will testify as a self-admitted former Communist. I want to point out to you what he paid in dues and its equivalent in American money is going far afield.

General attorney for nationality: Are you making this into an objection?

Attorney: I certainly am. I do object.

General attorney for nationality: Objection is overruled.

General attorney for nationality to witness:

Q. You stated, sir, that you had had your own Communist Party book. Will the counsel stipulate that I can ask him if it—

[fol. 162] Attorney: I object if you don't identify the party you are talking about. Unless he will identify all parties concerning the petitioners. He is a self-admitted Communist, let's proceed from there. I am not objecting to

General attorney for nationality to witness:

Q. Did you or did ever have any symbol or emblem of your membership in the Communist Party?

A. Communist Party book and I had once a symbol and I lost it and never got another one. My sister threw it away.

Q. You described what a Communist Party book looked like. Was this description you gave also of your own Communist Party book and pen?

A. Yes.

Q. Did you ever go to any meetings as a member of the Communist Party?

A. Yes, sir.

Q. Can you tell us approximately how often you went?

A. I can't tell you. It was a long period you have to be there most of the meetings. Unless you go for some type of school.

Q. With what frequency did you attend these meetings?

A. Usually once a month.

Q. Did you attend most of these meetings, to the best of your recollection?

A. Most of them.

Q. What occurred if anything at these meetings?

A. Well, they talk about what they have done, what the party line is, what they have to do and bring up certain examples.

Q. Dr. Halasz, I show you now a picture marked for identification Exhibit 1-A and ask you if you can identify that?

A. This is Mrs. Berenyi. This is Magdalena Berenyi. I believe so. I think this is it. This is Mrs. Berenyi. Must be an old picture. I do recognize her.

[fol. 163] General attorney for nationality: Let the record show that the witness affixed his initials to the rear of government Exhibit 1-A for identification. Let the record show that Exhibit 1-A for identification is entered into evidence as government Exhibit 1-A.

General attorney for nationality to witness:

Q. I show you now a picture marked government Exhibit 1-B for identification.

A. This is Dr. Berenyi. I think I initialed the picture at the time I was here.

General attorney for nationality: Let the record show that government Exhibit 1-B for identification was admitted into evidence as government Exhibit 1-B.

Attorney to witness:

Q. I have some questions I want to ask the witness on voir dire. Dr. Halasz, you identified this picture as Dr. Berenyi, are you sure of that?

A. I am sure of that.

Q. When would you say was this picture taken?

A. Must have been a long time ago. I would say sometime in 1956 or 1957.

Q. 1956 or 1957, that is 7 years ago?

A. 8 years ago, 7, 8, years ago.

Q. When did you see him before that time?

General attorney for nationality: I am going to overrule that.

Attorney: I have a right to it. You are offering this in identification. You are telling me I can't ask for identi-
[fol. 164] fication on this picture. I want to ask him if he recognizes this picture correctly.

General attorney for nationality: He already said he recognized this picture.

Attorney: What is the point of voir dire. If something is offered in evidence I have the right of voir dire. You have to direct the examination only. He supposedly recognizes the picture. As a picture I can't recognize it because it is a bad picture. I have a right.

General attorney for nationality: I will allow you to continue if you tell me the purpose.

Attorney: I don't think this is his picture. I want to ask him about it. What he recognizes about it.

General attorney for nationality: There will be no further voir dire in this case.

General attorney for nationality to witness:

Q. Dr. Halasz, you identified government Exhibit 1-B for identification?

A. Yes, I do remember this is his picture.

Q. As that of Dr. Kalman Berenyi?

A. Yes.

General attorney for nationality: Let the record show that government Exhibit 1-B for identification has been admitted into the record as government Exhibit 1-B.

[fol. 165] General attorney for nationality to witness:

Q. You have identified government Exhibit 1-A as a picture of Magdalena Berenyi.

Attorney. I object to that. He has not done it. That is why I want voir dire.

General attorney for nationality to witness:

Q. Do you or do you not identify the picture?
A. I can't say for sure. The picture looks like her. I can't say for sure.

Attorney: Now I ask if the exhibit be stricken out as not properly identified.
General attorney for nationality: Objection overruled.

General attorney for nationality to witness:

Q. Have you or have you not ever been acquainted with one Magdalena Berenyi?
A. I was acquainted with her, yes.
Q. When and where did you become acquainted with this lady?
A. In medical school or in the army.
Q. Was it in the medical school or the army?
A. Both.
Q. When did you first become acquainted?
A. In the army.
Q. Where was this, what location?
A. In Budapest.
Q. Approximately when was it?
A. 1952. Sometime around that time. 1950 or 1952.
Q. What was the location in Budapest, was it the army post?
A. Army post where we lived.
[fol. 166] Q. Were you or were you not at medical school at that time?
A. Yes, I was at that time.
Q. What were the circumstances surrounding your meeting Mrs. Berenyi?

A. Just casual.

Q. Casual or social?

A. Casual.

Q. Was it a social event or what was it?

A. She lived in the dormitory and so we saw each other. She was in the medical school many times. We went to the street car in the same group.

Q. How did you know she was in medical school?

A. She wear insignia. She came to medical school with us. As far as I remember she was in the same class with Dr. Berenyi.

Q. Were you in any classes with her?

A. No.

Q. You say then, you say she was in medical school because she wore the insignia and because she lived in this dormitory?

A. Yes.

Q. What was the insignia of the medical school?

A. I can't explain. I draw a picture if you want. In the medical school we had insignia of the medical corp of the army.

Attorney: I will concede, as witness was a student, his testimony would be that Dr. Magdalena Berenyi wore an arm label or some actual piece of clothing, some insignia of the medical school while a student at Budapest medical college. There is no issue on that.

General attorney for nationality to witness:

Q. You stated you saw her in the dormitory and on transportation going to the school?

A. That is right.

Q. Approximately with what frequency would you say you saw her?

A. I can't say how often. It had to be often because we went to medical school every day.

Q. For how long a period did you have occasion to see Mrs. Berenyi after you first met her?

A. One or two years. I can't remember when I gradu-
[fol. 167] ated and how long I was in that school.

Q. Thereafter did you see her after that one or two year period?

A. Yes, first many times in the army hospital where I believe she was interning or studying to be an internist. I saw her there once or twice. Maybe more. I can't recall exactly.

Q. When did you see her thereafter?

A. I recall I have seen her in 1955.

Q. What hospital was it at?

A. In the military hospital in Budapest.

Q. Were you on duty there?

A. I was studying there for two or three months.

Q. Besides what you have testified to so far did you at any other occasion see Mrs. Berenyi?

A. No.

Q. Do you or do you not have any reason to believe that Mrs. Magdalena Berenyi was ever a member of the Communist Party of Hungary?

Attorney: I don't care what his answer is, I object to the form of the question. His belief is not the thing. It is his knowledge. Belief is not involved here Mr. Myers. Let's have knowledge only.

General attorney for nationality to attorney:

Q. Are you making that an objection?

A. I certainly do.

General attorney for nationality: Overruled.

General attorney for nationality to witness:

Q. What was your answer?

A. No, she was not a member of the Communist Party.
[fol. 168] Q. That wasn't my question.

A. I have no reason to believe she was a member of the Communist Party.

Attorney: Mr. Myers, at this time based upon your statement you have completed the examination of Dr. Halasz with relation to Mrs. Magdalena Berenyi, one of the petitioners, I now respectfully move to strike out all evidence of this witness concerning the female secretary to the party who was insinuated by him, and only by himself, on the ground that it is misleading and does not relate to the female petitioner according to the witness' own testimony. It is completely unnecessary, it is immaterial, it is not within the issue of the petitions of Mr. and Mr. Berenyi. And to keep such evidence in the record might be misinterpreted by anyone reading the record and not completing their reading that probably the witness was referring to Dr. Magdalena Berenyi as the female secretary of the Communist Party meeting. There is no reason whatever for this line of testimony.

General Attorney for nationality: Objection is overruled.

General attorney for nationality to witness:

Dr. Halasz, you have identified government Exhibit 1-B as being the picture of Dr. Kalman Berenyi?

A. Yes, sir.

Q. Are you acquainted or have you ever been acquainted with Dr. Berenyi?

A. Yes, I was acquainted with him.

Q. Would you state when and where you first met Dr. Berenyi?

A. I met him in this army unit for such medical students in the army in the dormitory.

Q. When was that?

A. In 1950 or 1951.

Q. Where was that?

A. In the army dormitory in Budapest.

[fol. 169] Q. Will you state the circumstances when you first met him?

A. I can't recall. Just he was there and I was there. We see each other.

Q. Did you see him thereafter?

A. Yes. I have seen him there often.

General attorney for nationality: I stipulate that an affidavit made by one Pal Halasz on July 9, 1959 in front of Investigator Jay T. Kamphuis in the Chicago office is hereby admitted into evidence as Exhibit 1-C.

General attorney for nationality to witness:

Q. How often after you first met Dr. Kalman Berenyi did you see him?

A. I can't say.

Q. To the best that you remember?

A. Two, three times a week. I would say.

Q. For how long a period did you see him?

A. One or one and a half years. One to two years.

Q. What were the physical surroundings where you saw him?

A. In the army dormitory.

Q. Did you ever see him any other place?

A. He was in the medical school, I have seen him there and playground.

Q. Did you ever attend any class in the medical school with Dr. Kalman Berenyi?

A. No, sir.

Q. Is it or is it not true that you know of any facts which would indicate that Dr. Kalman Berenyi was a member of the Communist Party?

A. Yes, I know facts.

Q. Will you state those facts for us?

A. Well, as I was a member of the Communist Party I attended Communist Party meetings in the army unit. And when I was there I have seen him, not each time, but I have seen him in the Communist Party meeting. Whether he was a guest, which many times happens in the Communist Party to get him into the Communist Party because he was a leading student in the medical school, and they called him as a guest or whether he was ever a

[fol. 170] member, I can't recall. But I have seen him on the meeting, that I can state.

Q. Where were these meetings you refer to?

Attorney: Would you please state that question again?

General attorney for nationality: Read the question back from the record. Let the record show that the question asked by the government attorney was read from the record to counsel for petitioner.

General attorney for nationality to witness:

Q. I want to ask you if this is what you said so far. You said you saw Dr. Kalman Berenyi in some Communist Party meetings and that you don't know whether these meetings were or were not open to representatives other than the Communist Party?

A. Most meetings were not open actually. Not everybody could come in. Meetings were always closed. Except in cases when the Communist Party invited guests to be there into the meetings or certain section of the meeting.

Q. When you say meetings of the Communist Party, do you or do you not mean meetings of the Magyar Dolgozok Partja?

A. Yes, that is right.

Q. How did you know these were meetings of the Magyar Dolgozok Partja?

A. They were posted as meetings of the Magyar Dolgozok Partja, Communist Party meetings, and when you have to be admitted you show your party book.

Q. Where were the meetings at?

A. Usually in the dormitory of the army camp or one of the rooms which was designated then as studying rooms.

Q. How did you know whether or not these meetings were open or closed or people were invited?

[fol. 171] A. I don't know that. That I don't know. Most of the time it was closed meeting.

Q. How did you know it was closed?

A. Let's put it this way. There were certain meetings

where election was stated that meeting had to be closed as I recall.

Q. What I am asking you, did anybody tell you or were there anything—?

A. No.

Q. Did anybody tell you these meetings were closed, did you have some source?

A. No. Nobody told you. It was a closed meeting.

Q. Are you or are you not assuming they were closed?

A. I am assuming it was closed. I know there were people never could come in for Communist Party meeting. They were not considered they would be a member of the Communist Party.

Q. You say you know there were people couldn't come into these meetings. How did you know this?

A. They never were invited. And their attitude, or not attitude, but their study or belief never indicated, they never would call them in for a Communist Party meeting because they didn't want them to be a Communist Party member.

Q. Could there have been people there who were not members of the Communist Party?

A. They could be. I assume they could. I can't say yes or not.

Q. From your own knowledge you cannot indicate positively or negatively?

A. I cannot indicate positively or negatively. They were occasions I know when outside guests were invited to see party meetings.

Attorney: His answer is positive that they were outside members when invited.

General attorney for nationality to witness:

Q. Approximately how many of these meetings would you say were meetings of the Communist Party did you see [fol. 172] Dr. Berenyi there?

A. I have seen him several times there on those meetings. I can't say once.

Q. Would you say more than 20 or less than 20?

A. I don't know. I can't give you a general figure. I know I can't recall those. It is impossible. My memory is not that good.

Q. Do you think generally there were a lot of meetings he was at or a few meetings he was at?

Attorney: I am going to object to that. It is leading and suggestive. He has stated on three occasions that he can't recall. I don't know the meaning of the word a lot either.

General attorney for nationality: Objection sustained.

General attorney for nationality to witness:

Q. Besides what you have stated, do you have any knowledge or recollection, facts which would indicate to you that Dr. Kalman Berenyi was a member of the Magyar Dolgozok Partja?

A. No.

Q. To your knowledge did Dr. Kalman Berenyi ever possess what you have indicated was a Communist Party book?

A. No. I have never seen his Communist Party book.

Q. You don't know if he had one or not, is that correct?

A. No. I don't know it.

Q. To your knowledge did he or did he not possess an emblem, pen, or insignia of the Communist Party?

A. I have to answer this way. On the uniform we never wear insignia of the Communist Party.

Q. You did not see such a thing?

A. I did not see it.

Q. Did he or did he not pay dues to the Communist [fol. 173] Party?

A. I don't know. That was handled by the officer of the party.

Q. Did you ever discuss politics or economics with Dr. Kalman Berenyi?

A. Off and on we discussed economics of the system. I never had to be afraid he is going to turn me in.

Q. Did you ever say anything criticizing the Communist Party or Hungarian government?

A. Yes, I did and he did that also. I can't recall what it was because off and on we played soccer and volleyball together. Many times I asked him to help me with my medical studies. Generally those times were were alone.

Q. To your knowledge did he ever say anything pertinent which would indicate he believed in Communism?

A. I don't believe he was a Communist.

Q. Did he ever say anything about it?

A. I can't recall whether he said anything he believes in Communism or not. But from what he told me about what he felt about what the party is doing and government, I felt he was not a Communist.

Q. Do you recall anything specifically which he said would lead you to the conclusion you just made?

A. I can't recall anything specifically.

Q. Dr. Halasz, did you play any part in the October, 1956 revolution against the government?

A. Yes.

Q. What part did you play?

A. I was in my unit about 2, 2½ hours. After fight with the Russians they went to Budapest. Previously when we fight against Russians my unit we were ordered out and we stop secret police to stop killing people. And we took care of them.

Q. To your knowledge did Dr. Magdalena Berenyi or Dr. Kalman Berenyi play any part in the October, 1956 revolution against the Communist government of Hungary?

A. I didn't see them play any part but I assume because Dr. Berenyi was in the army hospital and I took hundreds of Hungarians into the hospital, she was working there, [fol. 174] she must take part as a doctor. Dr. Berenyi with his unit had to be there. I believe he was stationed in Budapest.

Q. Would you have any personal knowledge?

A. Personal knowledge that his unit was in the midst of the fight against the Russians.

Q. Do you or do you not have any reason at all to dislike either Magdalena Berenyi or Kalman Berenyi?

A. I like them very much. They are very nice people.

General attorney for nationality: Counsel, you may cross-examine.

Attorney to witness:

Q. Dr. Halasz, if for any reason you don't understand me please don't answer the question.

A. I will ask you to repeat it.

Q. Would I be correct in saying in summary of your testimony relating to Dr. Magdalena Berenyi you have no information whatever that would lead you to the conclusion that she was a member of the Communist Party while you knew her in Hungary, is that correct?

A. I know she was not a member of the Communist Party.

Q. You freely state that?

A. I can because I have never seen her at a party meeting. She was half way afraid of me because I was a member of the Communist Party.

Q. With relation to Dr. Kalman Berenyi, would I be correct in saying you actually have no information or facts that would lead you to believe that he was in fact a member of the Communist Party?

A. Only what I have seen. I have seen him on my party meetings.

Q. These were meetings that could have been attended by him by invitation, is that right?

A. Could be.

Q. Dr. Halasz, would you say that by his mere attending these unstated number of meetings in your mind creates the conclusion he was a Communist?

A. Yes in my mind. He was there I know and he created [fol. 175] the feeling he was not a Communist but a member of the Communist Party.

Q. No one ever told you that, is that right?

A. No.

Q. Did he particpate in these meetings by speaking, participate as an official of any of these party meetings?

A. I can't recall he participated as a speaker but I know he was not an officer in the party.

Q. Would you say he was an onlooker or listener?

A. I could. He could be an onlooker or listener but he also could have been a member of the Communist Party.

Q. But you don't know?

A. As I said previously I assume he was a member of the Communist Party because he was there.

Q. Did he attend every one of the meetings you attended?

A. No. There were occasions when I wasn't there. I don't know if he was there.

Q. You are not accusing him of being there when you weren't there?

A. No.

Q. With relation to the number of the meetings you went to, how many times would you say Dr. Kalman Berenyi actually attended any of those meetings?

A. I can't recall that. It was 12, 13 years ago.

Q. Dr. Halasz, I realize that. Would you say that at these meetings he sat quietly?

A. I can't recall. I haven't been watching. Usually a speaker was speaking.

Q. Do you remember Dr. Kalman Berenyi ever speaking at any of these meetings to the group?

A. Not at these meetings. I do recall he spoke, they told him no ideological philosophy. What they say.

Q. I don't understand you.

A. In the medical school in Hungary they told us you could not be a doctor if you don't know Russian, if you don't know the Communist ideology. You have to know that. Therefore, we had to pick up the Russian Language, we had to make up examples.

Q. You will agree with me when you went to medical

school the Communist Party was in control of Hungary and it was the sole party of Hungary?

A. That is right.

[fol. 176] Q. And that the Communist Party was in control of the Budapest medical university?

A. That is right, but all universities.

Q. Would you agree with me it was not a requirement to be a member of the Communist Party in order to go to medical school?

A. I agree it wasn't a requirement to be a member. But it helps you to get into the school, university, if you were a member.

Q. But you were not required to be a member?

A. No.

Q. Would you also agree, while you attended medical school certain subjects they were required in addition to your particular specialization was learning about Communism and the idealogy of Communism.

A. That is right.

Q. This was a required course of study?

A. It was a required course. If you failed to pass the course you have to repeat a whole year.

Q. If Kalman Berenyi studied Russian, read Russian newspapers or Hungarian Communist papers that were required, just as required as reading any other book. . . .

A. No. We never read Russian newspapers.

Q. I brought that out of an imaginary scene.

A. I agree with you it was if you read those papers, it was required because we have to stay there.

Q. You were examined in it just as you were on medical problems?

A. Yes.

Q. Therefore, Dr. Halasz, if Dr. Kalman Berenyi did read a book or attend meetings where a Communist Party talk was given, would that make him a Communist?

A. There were lots of meetings where the whole group was together but it was not a Communist Party meeting.

It was required to be there because of the party line was passed down to medical students.

Q. Were the medical students regardless of race or religion or political affiliation also required to attend party line meetings?

A. Not Communist Party meetings.

Q. At any party line meetings was the Communist doctrine expressly brought forth?

A. Yes.

[fol. 177] Q. Was there any room for argument against the Communist Party line?

A. No, you did not say anything, unless you want to die.

Q. Did Dr. Berenyi, Kalman Berenyi, to your knowledge ever attend these party line meetings?

A. Yes.

Q. Did you see him there?

A. Yes, as I recall I see him there. He had to be there, it was the whole group. In the army you have to follow orders.

Q. Did he participate in these party line meetings as an official, as speaker, or merely as an observer attending the meeting with the majority of other students?

A. He attended the meetings. I am talking about the army. I don't know in the university. In the army sometime they gave him, they told him, not in the Communist Party but other meetings, what I would say for example when they talk spreading with propaganda. He was told go to the meeting. You call the speaker.

Q. But that didn't mean he was expressing the Communist Party line?

A. You can't say no.

Q. Would you say he was advocating the Communist Party line?

A. I wouldn't say anything, he had to say what they told him to say.

Q. That wouldn't in your opinion make him a Communist Party member would it?

A. No, that does not make him a Communist Party member. I could say sure there were with my knowledge people who was not a member of the Communist Party who had to do that.

Q. Did you ever talk politics at any time with Dr. Kalman Berenyi?

A. Yes. Off and on.

Q. When was that?

A. I believe in 1951. I can't recall exactly.

Q. This was while you were in school?

A. Yes.

Q. Isn't it a fact at that time he was in the army while finishing his school?

A. Yes, I know he wanted out of the army.

Q. Did he say to you at any time I believe in Communism or the Communist form of government?

A. No.

[fol. 178] Q. Did he say to you I believe in the violent overthrow of the United States government by force or violence?

A. No. As I recall he spoke English and very few people did that.

Q. Did you understand English?

A. I did not. Just I study one year of English.

Q. Obviously when I say conversation with Dr. Berenyi I refer to intelligent conversations that you understood and he understood?

A. Yes.

Q. Did he ever advocate the Marxist form of government?

A. No.

Q. Did he ever advocate the Hungarian Communist form of government as the proper form of government?

A. No.

Q. But you did talk politics?

A. Yes.

Q. Was really his desire to go away from Hungary as quickly as possible or away from the army?

A. I don't believe he wanted, to get out of Hungary but from his conversation, but I know that he didn't want the Communist government. He didn't like them. He didn't like what they were doing there. He wanted out of the army.

Q. Dr. Halasz, may I ask you this record that has been introduced into evidence the transcript is that of July 9, 1959 you state, he is a very good student?

A. Yes.

Q. Are you familiar with his personal background, family background?

A. I know his father was working for the street car in Budapest. He was working for the street car company as I recall.

Q. As a motorman?

A. Yes.

Q. Are you aware of the fact that Dr. Berenyi received a scholarship to complete his medical studies by joining the Hungarian army?

A. Certainly he did receive it. I can't say it was a scholarship. They made it easier for us to study. They gave us board, we eat.

Q. That was why you were in the army?

A. I can't say I was. That was a part of it. I was there because I was told to join the Communist Party.

[fol. 179] Q. Would you say mere joining of the Hungarian army while a medical student was an asset to you over Communist Party membership?

A. No.

Q. Isn't it a fact while you knew Dr. Berenyi at all times either at school or in the army he at all times served in the hospital?

A. Yes. He was most of the time at the hospital, as medical students we were almost all day in the hospital or school. In the evening he slept in the dormitory.

Q. While he was in the army he again served in a hospital?

A. Yes. I don't know how much he was in the hospital. As far as I know.

Q. And this hospital took care of civilians as well as army boys?

A. Yes.

Q. It was anyone could go there from Budapest?

A. If they had permission from the army to go in there. Usually the sick people had that.

Q. Dr. Halasz, would you say that it was reasonable within your knowledge to say that attempts were made by the Communist Party officials to indoctrinate this brilliant student Dr. Kalman Berenyi so that he would join the Communist Party?

A. It could be that he was not indoctrinated. That is why they invited him to join the Communist Party to see it.

Q. Dr. Halasz, you are not indicating he was indoctrinated into the party what you are saying is that as far as you know they attempted to indoctrinate him?

A. I can't say they tried to indoctrinate him because I have seen him on these party meetings. I assume he was a member of the Communist Party. Because I never talk to him about this indoctrinate him into the Communist Party. I can state I have never seen his party book although I have sat at the door to check party books when they were coming in. I never saw his party book.

Q. If you were the doorman as you have just described yourself with the duty of checking books and you didn't see any party book of Dr. Kalman Berenyi would not that [fol. 180] be due to the fact he was an invited guest?

A. Most likely he had to be or he went in prior to when I started to work there. It could be he went there or party officials invited him.

Q. Could you tell me what would happen if a person such as Dr. Berenyi is invited to attend a Communist Party meeting and he himself is not there as a captain in the medical corp?

A. He was a medical student at that time.

Q. Did you attend meetings of the Communist Party with him while he was a medical student?

A. That is the time I am talking about. I didn't have too much communication after he finished medical school.

Q. While he was a student at a Communist school operated by the Communist government of Hungary and a man is invited to attend a meeting of the Communist party, assuming all those things, would you say as an actual member of the Communist Party he would be taking some risk if he didn't go?

A. He would be kicked out from the medical school at once, within one month. Or if not the medical school at least he would lose his scholarship, what he had in the army.

Q. So therefore, while Dr. Berenyi may have in your opinion as you testified attended some Communist Party meetings, maybe if he were an invitee, it was an invitee under compulsion?

A. Yes.

Attorney: No further questions.

General attorney for nationality to witness:

Q. You stated that you were the doorman, that is you were...

A. Not always. Off and on.

Q. Do you recall if you were the person who took care of the door at any of the meetings that Dr. Kalman Berenyi attended?

A. When he was there?

[fol. 181] Q. Yes, were you ever the man who checked the party books when he was there?

A. I can't recall exactly when I was there, and I can't recall exactly when I was a doorman. I can't say.

Q. Dr. Halasz, do you have anything you desire to, say for the record? Anything you want to say for the record?

A. I don't know what I can desire. I know one thing. That how I feel if I would be deported in this time I have

no place to go. You understand me. I can't go back to Hungary.

Q. Your status is not an issue here.

A. I feel the same way in regard to Dr. Berenyi. He was one of the leading students in the medical school. He is an excellent brain, an excellent doctor. I don't know what he is doing at the present time. I don't know whether he has a license or not. And I do feel that way, that the United States medical association would gain with him instead of lose and I do to say if he was a member of the Communist Party he had to be under pressure and he had to be there because of the requirements, to study and make the requirements. And when he left the country because of the Communist regime he gave up everything that was behind him.

Attorney to witness:

Q. When did you last hear or speak to Dr. Berenyi or Kalman Berenyi directly or indirectly?

A. I haven't talked to him since 1955, I believe so. That was the last time. That time we said hello, how are you.

Q. Have you heard from Dr. Kalman Berenyi anytime since 1959?

A. At that time I didn't hear from him since 1955.

Q. Have you heard from Dr. Magdalena Berenyi since 1955?

A. No, I didn't hear from her at all. I believe in 1956 in the army hospital.

Q. Have you been out of contact with both Drs. Berenyi for at least 8 years?

A. Right.

[fol. 182] Q. Has anyone approached you to give testimony favorable to them?

A. No.

Q. Have you ever spoken to me before today?

A. No.

Q. Has anyone on my behalf spoken to you?

A. No.

Q. Has anyone on behalf of either Drs. Berenyi spoken to you in the last two, three months?

A. No. In regard to Dr. Berenyi I believe an Immigration officer spoke to me.

Attorney: I have no questions.

General attorney for nationality: This hearing is closed for today.

I hereby certify that this record, to the best of my knowledge and belief, is a true report of everything that was stated; with exception of statements made off the record, during the course of the hearing.

General attorney for nationality

I hereby certify the foregoing record, pages 1 to 28, inclusive, to be a true and complete transcript to the notes taken by me in this matter.

VIVIAN BARGER
Vivian Barger, Stenographer

[fol. 183]

GOVERNMENT'S EXHIBIT 1-B

UNITED STATES DISTRICT COURT

BOSTON, MASSACHUSETTS

In the Matter of the Petitions of

KALMAN JOHN BERENYI

Petition No. 351469

and

MAGDALENA RETSAGI BERENYI

Petition No. 351468

to be Admitted to Become Citizens of
the United States of America

Preliminary examination continued before Designated Naturalization Examiner at 150 Tremont Street, Boston, Massachusetts, on August 21, 1964.

PRESENT:

JOSEPH B. SULLIVAN
Naturalization Examiner

KALMAN JOHN BERENYI
Petitioner

MAGDALENA RETSAGI BERENYI
Petitioner

CHARLES SPAR, Attorney-at-Law
In Behalf of Petitioners

GYORGY (GEORGE) KURY
Witness

ETTA R. TAYLOR
Stenographer

[fol. 184] Examiner to witness:

Q. Dr. Kury, my name is Joseph B. Sullivan. I am a general attorney for naturalization in the United States Department of Justice, Immigration and Naturalization Service. I desire to question you under oath concerning two petitions filed in the United States District Court by Kalman and Magdalena Berenyi and concerning a matter of interest to the government. You are advised that any statement you make must be voluntary and may be used by the government as evidence in any proceeding it may see fit to institute. Do you understand?

A. Yes.

Q. Are you willing to testify before me under these conditions?

A. Yes, I do.

Q. Please raise your right hand (witness complies). Do you solemnly swear that all the statements you are about to make at this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

Q. What is your full and complete name?

A. George Kury.

Q. In what country were you born?

A. Hungary.

Q. When and where were you born?

A. Jaszkiser, Hungary, on May 26, 1928.

Q. Of what country are you a citizen?

A. United States.

Q. What is your occupation?

A. Physician, pathologist.

Q. What medical school did you attend?

A. Medical University of Budapest.

Q. Was it always known by that name?

A. No, it was called Peter Pazmany University.

Q. When was the name changed from the Peter Pazmany University to the Medical University of Budapest?

A. I do not recall exactly, I think somewhere after 1946.

Q. Present at this hearing are two petitioners for United States citizenship. Their names are Kalman Ber-

enyi and Magdalena Berenyi. Do you recognize the petitioners and are you acquainted with them?

A. Yes, I do.

[fol. 185] Q. Are you acquainted with both petitioners?

A. Yes.

Q. When, where and under what circumstances did you first meet the petitioner Kalman Berenyi?

A. I do not recall exactly when I met him first, but we were classmates. He was enrolled at the Medical University of Budapest which I think was called Peter Pazmany University in September 1946.

Q. In other words, you were in the same class with Kalman Berenyi?

A. Yes.

Q. Doctor, I want you to think carefully when I ask you the next question. Of your own knowledge, do you know if Kalman Berenyi was ever a member of the Communist Party?

A. Yes, I do.

By counsel: Objection on the ground it is a conclusion. I have no objection if you ask him any circumstances or facts, but to ask the dogmatic question is in my opinion a conclusion of fact.

By examiner: Counsel's objection is noted.

Examiner to witness.

Q. Please answer the question.

A. Yes, I do.

Q. For what reason do you base your knowledge that Kalman Berenyi was a member of the Communist Party?

By counsel: Objection.

By examiner: Objection noted.

[fol. 186] Examiner to witness:

Q. Please answer the question.

A. I know he was a secretary in 1948, in September, of the so-called Tanuloker. This was a little group at the Uni-

versity, I don't remember how many were in our class, maybe twenty or more. The official purpose of this was to get outstanding university students for day-by-day learning. What we studied in the morning sessions we recapitulated in the afternoon. But there was a string attached. There was a person in each group who was responsible for the ideological education of the people who were in the group at this time in September 1948. To my knowledge all were Party members.

By counsel: Objection.
By examiner: Objection noted.

Examiner to witness:

Q. Please continue.

A. So Dr. Kalman Berenyi was the head of this Group No. 4 and he was responsible for all the ideological education, which consisted to talk over regularly what was in the newspapers, any political news what happened, and at this time he tried to persuade people who were in the group to go to movies and see Soviet films and to read books on Marxism and Leninism. I was a member of this group but I only went to the first meeting, then I changed the group and went to another. Dr. Kalman Berenyi said at the first meeting that he joined the Communist Party in 1945 and he was a member since.

Q. Do I understand you to say that Dr. Kalman Berenyi, who is present here today at this hearing, stated in your presence that he joined the Communist Party in 1945, at this group discussion?

A. Yes.

[fol. 187] Q. Where were these group discussions held?

A. These was at different parts of the university.

Q. How were the group leaders selected?

By counsel: Objection. I am going to object to the question on the ground that the question is leading and suggestive and that you are attempting to ask a question of a man who has not qualified himself as an expert in giv-

ing opinion evidence or whether he has knowledge of something or not. You cannot ask a man a question on a general basis how someone is appointed to a position or a title, without first qualifying him as to knowledge. I point out to you that according to his own testimony he had only one encounter with Dr. Kalman Berenyi at one of these so-called group meetings in 1948. You cannot ask him these questions without first qualifying him.

By examiner: Objection noted.

Examiner to witness:

Q. Do you know how these group leaders were selected?

A. I do not know because this was not done in our presence. It was done behind closed doors.

Q. What was Kalman Berenyi's general reputation at the college and around the campus as to association and affiliation with the Communist Party?

By counsel: Objection. I object on the ground that the alleged reputation of the petitioner some fifteen years ago is not relevant at this proceeding; that it is hearsay; that you have not qualified this witness that he knows of the reputation, and that reputation evidence is of no moment whatever in connection with a petition for naturalization. It does not establish membership in the Communist Party [fol. 188] or non-membership in that Party. I therefore ask that the question be stricken.

By examiner: Objection is noted. The question will stand.

Examiner to witness:

Q. Please answer the question.

A. His general reputation was that he was a Communist Party member and an enthusiastic one.

Q. Would you say that from your knowledge he was an opportunist?

By counsel: Objected to on the ground that it is leading and suggestive. You are placing words in his mouth. Ob-

jected to on the further ground I do not know the meaning of the word "opportunist" and I think the witness doesn't know it.

By examiner: Objection noted. Webster's Dictionary defines opportunism as "a taking advantage, as in politic, of opportunities or circumstances—with little regard for principles or ultimate consequences."

Examiner to witness:

Q. Will you please answer the question.

A. I never heard anybody saying that he was an opportunist.

Q. Now, Doctor Kury, did you ever observe or see either Kalman Berenyi or Magdalena Berenyi wearing a Communist Party emblem, either a red button, or a button on their sleeve or on a lapel or any other part of their cloth-[fol. 189] ing, civilian or military?

A. No, I do not recall. I saw so many people wearing emblems, I don't know.

Q. To your knowledge, do you know if Magdalena Berenyi was ever a member of the Communist Party?

A. Yes. I heard that she was.

By counsel: Objection. Not responsive. I move to strike the answer.

By examiner: Objection noted and denied.

Examiner to witness:

Q. Where did you hear it?

A. I had a friend who was also a Party member. I don't want to—(interruption by counsel)

By counsel: I move to strike out the answer on the ground that it is hearsay, incompetent and immaterial. It is hearsay and of no evidentiary value whatever, and cannot be used in this proceeding against the petitioner Magdalena Berenyi.

By examiner: The answer is proper and your objection is stricken out.

Examiner to witness:

Q. Doctor Kury, to your knowledge was either Kalman or Magdalena Berenyi ever in the Hungarian Army?

A. Yes.

[fol. 190] Q. Did they hold any rank in the Hungarian Army?

A. Yes, they were physicians in general. Dr. Berenyi became captain later.

Q. Were they in the Hungarian Army while attending the medical school?

A. Yes. At least Dr. Kalman was. I remember seeing him come in a military uniform in the college.

Q. Are you referring to both?

A. I am sure I saw her after graduation. I do not recall exactly but I saw her in uniform, too.

Q. Doctor Kury, do you want it definitely understood that the Kalman Berenyi present here at this hearing is the same Kalman Berenyi who, in your presence at one of these group discussions held at the medical school in September 1948, stated that he joined the Communist Party in 1945. Is that correct?

A. Yes.

Q. Do you wish to make any further statements?

A. No.

Examiner to counsel: Mr. Spar, do you wish to question the witness?

By counsel: Yes.

Counsel to witness:

Q. Doctor Kury, state your complete home address.

A. 165 Longwood Avenue, Brookline, Massachusetts.

Q. Are you practising medicine in the State of Massachusetts?

A. I am working in a hospital.

Q. Have you been admitted to practise medicine?

A. No, I have not received my certificate yet.

Q. What hospital?

A. Boston Lying-In Hospital.

Q. In what capacity?

A. Fellow in Pathology.

[fol. 191] Q. Have you completed the necessary examinations to become a licensed physician in Massachusetts?

A. Yes.

Q. Have you completed it successfully?

A. I will know it within two or three weeks.

Q. How long have you been residing in the United States?

A. I came in June 1957.

Q. And in the past seven years you have not become a licensed physician?

A. No.

Q. Can you tell me why?

A. I was too busy. I was in research before and I did not have any connection with clinical medicine.

Q. How many times have you taken the examination?

A. This is my third time.

Q. Would I be correct in saying that you failed the first two medical examinations for licensing?

A. You are correct.

Q. When did you take the first examination, Doctor?

A. In July of 1961.

Q. When did you take the second examination?

A. February 1962.

Q. Doctor, would I be correct also in saying that your title at the Lying-In Hospital in Boston is in Pathology?

A. No, Fellow in Pathology.

Q. That would indicate that you are basically a student of pathology in internship?

A. No.

Q. What does it indicate?

A. Because I have no Massachusetts license I cannot have an official title as assistant pathologist.

Q. Have you been licensed in any state of the United States to practice medicine?

A. Yes, in Maine.

Q. When were you so licensed?

A. I took the examination in July, this year, for the first time.

Q. That would be the Maine State Board Examination?

A. Yes.

[fol. 192] Q. When did you obtain this license?

A. I do not recall exactly the date. The examination was July 8th, 9th and 10th of this year and I got the license about a month later.

Q. That would mean, Doctor, that you were licensed to practise medicine in the State of Maine not more than two or three weeks ago at the most?

A. Yes.

Q. Would I be correct in saying that as of this date you have never practised medicine in the United States as a licensed physician?

A. Yes, it is correct.

Q. Doctor Kury, do you know where Kalman Berenyi was born?

A. I don't recall.

Q. Did you ever know?

A. Maybe I forget.

Q. Prior to your entry into medical school were you a friend of Dr. Kalman Berenyi?

A. No, I didn't know him before.

Q. Do you know anything about his parents, his background?

A. I don't know him even closely.

Q. Doctor, may I digress for a moment—prior to your coming here today to testify under oath, did you ever participate in an interview with an officer of the Immigration and Naturalization Service?

A. Yes.

Q. How many times?

A. About Dr. Berenyi?

Q. Yes.

A. Several times, I don't know how many times.

Q. Do you recall the year of the first interview?

A. This was while I was at the Harvard Medical School.

Q. Harvard?

A. Yes.

Q. Had you contacted the Immigration Service?

A. No, they came to me.

Q. Could you tell us when that was?

A. This was around Winter of 1960.

Q. And you know how the Immigration Service had come to talk to you?

A. No.

Q. Had you previously notified them that you wished to give them information?

A. No, they just came to me and showed me two photographs.

[fol. 193] Q. Do you remember both photographs?

A. Yes.

Q. Did the officer tell you the names of the parties?

A. No, he didn't. He showed me photographs first and asked me.

Q. Did you recall the photographs and know the names without being told?

A. Yes.

Q. Did you ever inquire as to how and why the Immigration Officer came to you nearly four years ago without you soliciting to give this information?

A. What I was told was that there is some evidence, some person testified that Dr. Kalman Berenyi was a Party member and his wife was a Party member, and I think this was told me at the end of the meeting and not before.

Q. Did this meeting take place at the Harvard Medical Center?

A. Yes.

Q. At that time did they tell you who had told the Immigration authorities?

A. No.

Q. Did you sign a statement at that time to the Immigration officers?

A. No, I came to the Immigration office.

Q. When did you come to the Immigration office?

A. I don't recall.

Q. Would I be right in saying that it would be in the Winter of 1960, or the beginning of 1961?

A. Yes.

Q. And you signed the statement then under oath?

A. Yes. I signed what I said before.

Counsel to examiner: I call on you to produce this statement.

Counsel to witness:

Q. Is there any other statement you have signed?

A. No.

By examiner: Counsel may have an opportunity to review Dr. Kury's statement.

[fol. 194] By counsel: A sheaf of papers consisting of six typewritten pages is turned over to counsel for the petitioners, consisting of a sworn statement by this witness before Investigator T. R. Cass. Thank you, Mr. Sullivan.

By examiner: A short recess will be taken to give counsel time to read the aforementioned statement.

HEARING RESUMED

Counsel to witness:

Q. Other than this one statement which counsel for the Government has turned over to me, have you made any other written statements to the Immigration and Naturalization Service?

A. No.

Q. Thank you. You testified that you recall it was in the Winter of 1960?

A. I think so.

Q. Are you sure?

A. No, not absolutely sure.

Q. When did you enter the medical school—Harvard Medical School?

A. I was there two different times. When I came in 1957 I was there for three months, September, October and November. Then I went back to the Medical School again.

Q. How long did you stay there?

A. Until July 1, 1960.

Q. Well, could you tell us now, with relation to the time you left Harvard Medical School in July 1960, how much before that time did you give this statement to the officer of the Immigration Service in this building?

A. I don't know.

Q. Was it several weeks?

A. It was several months.

Q. Would you say three or four months?

A. Possibly more, I cannot tell you.

Q. Is your memory poor on that question?

A. Not very poor, I don't recall that time.

[fol. 195] Q. Was it a year before you left Harvard Medical in July 1960?

A. You can read the time.

Q. I am aware of the time. But I am asking you to exert your memory.

A. Yes.

Q. Is it an unusual thing to be called to the Immigration office?

A. Not unusual. I was not called. An investigator came to see me.

Q. Then you came to the Immigration office?

A. Yes.

Q. You testified in the Winter of 1960?

A. Maybe in the Spring of 1961.

Q. What year?

A. 1960 or 1959.

Q. You don't remember?

A. No. I was at the Immigration office several times.

Q. Doctor, is it possible that you were in the Immigration office to testify and to sign a statement concerning the two Doctors Berenyi in the Spring of 1959?

A. Yes, it is possible.

Q. You are not sure?

A. No.

Q. Dr. Kury, you testified this morning on direct examination that you entered medical school, which was then known as the Medical University of Budapest. Is that right?

A. Yes.

Q. You were a freshman at that school in 1946?

A. Yes, I entered in September 1946.

Q. How many freshmen entered that school who were in the freshman class?

A. It was quite a few, about five hundred or six hundred, as I recall.

Q. And at that time what was the nature of the government in Hungary?

A. In 1946, I do not know how to call it, the Communists did not take the power yet, so it was a mixed government of several parties.

Q. When you entered school in 1946 with some five hundred or six hundred other freshmen students did you then meet the petitioner Kalman Berenyi?

A. I do not recall when I exactly met him. I do not know whether it was before we went to Communist lectures.

[fol. 196] Q. I am talking now of your freshman year as an example. Were you friendly with Kalman Berenyi then?

A. No, I did not have much personal relationship.

Q. Did you know anything about him at that time?

A. In 1946, no.

Q. You had no opinion then as to his political activity?

A. No.

Q. Would I be right in saying he was a student similar to yourself?

A. Yes.

Q. Were the classes small at that time?

A. No, it was quite a problem with space. There were more than usual.

Q. How many students were in a class?

A. Five or six hundred.

Q. Did they all attend one class or were you broken up into study groups?

A. Groups were broken up in 1946 when I joined with them.

Q. For studying, lectures and clinical work?

A. Communist lectures were in the same rooms.

Q. And that would be five or six hundred students at a time?

A. At this time it was not really obligatory to attend all the lectures, so usually not everybody was there.

Q. Did you, during the freshman year you say you had little or no contact with Dr. Kalman Berenyi?

A. I had no personal contact with him at all. We were not friends or enemies during that time.

Q. You were not friends or enemies?

A. No.

Q. During your freshman year did you have occasion to see or know the other petitioner, Dr. Magdalena Berenyi?

A. No. I think I recall—I do not recall exactly when I met her—I knew her by sight, but my first recollection was about 1947.

Q. Was she a co-student with you as a freshman in 1946?

A. No.

Q. My question is, was she a student in your freshman class among the five or six hundred students?

A. I do not recall.

[fol. 197] Q. You do not recall?

A. I do not recall.

Q. Do you remember seeing her in your freshman class?

A. I do not remember.

Q. Did you know her maiden name?

A. Yes.

Q. When did you learn her maiden name?

A. I don't recall exactly. I knew her brother.

Q. When did you know for the first time Dr. Magdalena Berenyi?

A. I can't recall any time when I met her. My recollection was when I was sick in an internal medical clinic.

Q. That was in 1951?

A. I think so.

Q. Doctor Kury, would I be correct in saying that you met or knew of Dr. Magdalena Berenyi five years or so after you first knew Dr. Kalman Berenyi?

A. Well, I really don't recall when I met her, but the story was that I knew her brother who was a physician at the Medical University. He was a nice man and a physician. My friend came to visit me and spoke to me about him. That is my recollection, and we spoke about the family and about the sister and he mentioned to me that he knows his sister and she is also a Party member.

Q. Doctor, when this alleged conversation took place, am I right in saying it was at least 1951 when you were in a hospital as a patient?

A. That is right.

Q. And when this alleged conversation took place is it a fact you didn't know Dr. Magdalena Berenyi?

A. I know her by sight.

Q. When, for the first time did you meet Dr. Magdalena Berenyi?

A. I don't recall.

Q. When did you first talk to Dr. Magdalena Berenyi?

A. I know her by sight. I would like to help you but I can't pinpoint any date.

Q. Did you ever talk to her?

A. I spoke a few words.

Q. Basically, hello and goodbye and nothing more?

A. Yes.

Q. Did you know that she was a student with you?

A. Yes.

[fol. 198] Q. When did you know that?

A. I just saw her entering at the university and she was there, and her brother once mentioned to me that she was his sister. I knew the name was identical.

Q. Dr. Kury, in all your life, have you ever spoken to Dr. Magdalena Berenyi concerning political matters?

A. I do not recall.

Q. In all your life has she ever stated to you that she was, or sympathized with the Communist Party?

A. No.

Q. In all your life have you ever heard her at a meeting, at a gathering, espouse or come forward with communist doctrines and advocate Communism?

A. No.

Q. In all your life, doctor, to this moment, have you ever heard Dr. Magdalena Berenyi advocate the overthrow of the United States Government by force and violence?

A. No.

Q. In all your life have you ever heard Dr. Magdalena Berenyi state that she was a member of the Communist Party?

A. No.

Q. In all your life have you ever seen her attend Communist Party meetings?

A. I did not go to any Communist Party meetings, but this does not mean anything.

Q. I am referring only to Dr. Magdalena Berenyi first.

A. Yes.

Q. Have you ever been an intimate friend of Dr. Magdalena Berenyi?

A. No.

Q. However, is it a fact that you were friendly with her brother, also a physician?

A. I did not say I was friendly. I appreciated him very much. He was a good physician and was working at the time as my physician.

Q. How long were you a patient in that institution?

A. I entered there from April to September.

Q. Were you a patient in the hospital, then, for about six months?

A. Yes.

Q. Were you being treated there for a mental disease?

A. No.

[fol. 199] By examiner: I object. Confine yourself to the issue.

By counsel: His credibility is in issue at all times.

Counsel to witness:

Q. I am referring now only to Dr. Magdalena Berenyi and no one else as yet. Do you have any knowledge from the moment of your birth to the present time whether or not Dr. Magdalena Berenyi, the lady sitting next to me, personal knowledge that she was a member of the Communist Party at the university?

A. I told you this is what I heard from my friend.

Q. And the only thing that you know is what you were told by some else. Is that right?

A. Yes.

Q. What was this friend's name?

By examiner: I object. Counsel, note the objection.

By witness: I refuse to give any name.

Counsel to witness:

Q. Doctor, did you ever state that to your personal knowledge, or to your knowledge, she was a member of the university Communist Party group?

A. I do not recall. I think I told you that I heard from my friend that she was.

Q. Do you consider a statement made to you by a friend concerning a third party whom you did not know well, as personal knowledge by yourself?

A. This was a reliable person and a good friend of mine and he never lied to me, and under those circumstances he would not have lied to me, at least to my knowledge.

Q. Doctor Kury, I ask you again. Do you consider or state that to your knowledge someone is or is not a member of the Communist Party? To your knowledge, now, [fol. 200] based upon the statement made by a third party?

A. Yes, because he, himself, was a member of the Party and was enthusiastic about it. He was a Jewish boy, his family got killed and he believed in Communism, but as far as you could speak to him, he did not report anybody.

By examiner: Objection as hearsay.

Counsel to witness:

Q. Doctor, were you asked in April of 1959 the following question, and I quote to you, and please listen to my quotation for the exact language: "To your knowledge, was she a member of the University Communist Party Group?" What was your answer?

A. I gave the answer previously that I heard it from my friend.

Q. I call to your attention the answer that is typewritten in this report which you signed. In response to that question, you stated, answer: "Yes, she was." Was that your answer?

A. If it is there, is was my answer.

Q. Doctor, did you state at that time, when you gave this statement in April of 1959, that your knowledge was based solely on what someone else had told you?

A. It was mainly based on what I was told by my friend.

Q. Could you tell me here, from your observation of Dr. Magdalena Berenyi, and I want to call to your attention again that I am concentrating on the lady first, can you tell me if she was an active member of the university Communist Party group?

A. No, I can't tell you.

Q. Did she, in your opinion, attempt to influence anybody at the university to Communism?

A. I don't have any knowledge about it, but I did not know her personally so close.

Q. Doctor, you have no evidence of any attempt on her part to influence?

A. No.

[fol. 201] Q. You are not accusing her of attempting to influence people at the university?

A. No.

Q. Doctor, you are not trying to intimate here that even though you don't have knowledge—

By Examiner Sullivan: I believe the witness has answered your question to the point.

Counsel to witness:

Q. Do you know whether Dr. Magdalena Berenyi joined the army while she was a student, while she was at the university?

A. I told you, I think she did.

Q. Do you know, to your own knowledge?

A. The army had special uniforms.

Q. Did she wear a special army uniform?

A. Yes.

Q. When?

A. I do not recall.

Q. Doctor, I am a little confused. Weren't you a temporary drop-out at the university?

A. Yes.

Q. For how long a period did you remain away from the Medical University?

A. I was in and out until I graduated two years later. I was sick.

Q. When did you not go to the university as a student from 1946 through 1954?

A. I tried to leave Hungary in December 1949 so I was arrested. I spent one year in jail. Then I went back to the university. I enrolled again and got sick.

Q. When did you re-enroll?

A. I started again about February 1951 and I got sick again in March or April of 1951 until about September.

Q. When did you return to the university?

A. I returned to the university again and I got sick again and I returned in September 1952, and I did not stay out of the university. I continued there and graduated in 1954.

[fol. 202] Q. Doctor, just to make the record clear, because there might be some errors in my understanding you. Am I correct in saying that you discontinued, for all intents and purposes, being a classmate of the two Doctors Berenyi in December 1949, when you attempted to escape?

A. No. I am not sure whether we started in 1946, because I was in three medical classes, in 1946, and was studying in the class which was a year lower and graduated in 1953. I dropped out of this, too, because of sickness, and I graduated in 1954.

Q. Doctor, either I don't understand you or you don't understand me. I understood your testimony to be that to the best of your knowledge the two Doctors Berenyi entered the school the same time as you did, as a freshman. That would be in September 1946 with a group of freshmen students, five hundred or six hundred in number. Is that true?

A. I don't recall about her but I am positive that Dr. Kalman Berenyi entered with me as a freshman in the same year.

Q. Doctor Kury, returning now for a moment to Dr. Kalman Berenyi, is it a fact that as of December 1949, when you sought to leave Hungary and remained out of school for a period of time, as of that time you ceased being a classmate in the same year as Dr. Kalman Berenyi?

A. Yes.

Q. Since that time, December of 1949, did you have any association with Dr. Kalman Berenyi of any kind whatever?

A. No, I just saw him on the street and at the university

Q. So, therefore, we can pinpoint the fact that subsequent to December of 1949 you had no dealings whatever with Dr. Kalman Berenyi?

A. Yes.

Q. Doctor Kury, reverting back again to Dr. Magdalena Berenyi. You have testified that you were away from the university for several periods of time, either in jail or in a hospital.

A. Yes.

[fol. 203] Q. Do you also testify that to your knowledge Dr. Magdalena Berenyi joined the Hungarian Army?

A. Yes.

Q. How did you know that?

A. I saw her in uniform.

Q. Can you tell us when you saw her in uniform? Was it after you had been in jail or before?

A. I think after I returned from the jail.

Q. That would mean that it would be some time in February, March or April of 1951?

A. Yes, I came back from jail.

Q. You saw her in a uniform?

A. Yes.

Q. Officer's uniform or a private's uniform?

A. What do you mean?

Q. Do you know what an officer is?

A. Yes.

Q. What is that?

A. I do not know what their rank was.

Q. Do you know whether Dr. Magdalena Berenyi, when you saw her in uniform, had the rank of an officer?

A. Yes.

Q. And this is while she was still a student in the school?

A. No, nobody had the rank of officer as a student. You got the rank of first lieutenant after you graduated.

I am getting more confused. Didn't you just testify a few moments ago that while Dr. Magdalena Berenyi was

still at the university as a student she was already a member of the Communist Party?

A. I did not state that she had any rank of first lieutenant when she was a medical student.

Q. Again I ask you, was she in the army of the Hungarian government while she was a student at the university, to your knowledge?

A. I recall seeing her in uniform.

Q. Can you tell us when you recall seeing her?

A. I do not recall any dates.

Q. Was she an undergraduate?

A. What do you mean?

Q. Was she an undergraduate then, still a student?

A. Yes.

Q. Doctor Kury, do you recall being questioned at this office in April of 1959?

A. I do not recall.

Q. Do you recall making this statement in April 1959?

A. I do not recall.

[fol. 204] Q. I show you this paper and ask if your signature is on it.

A. (After examination) Yes.

Q. Did you swear to it?

A. Yes.

Q. I state for the record that this is dated April 14, 1959. Does that refresh your recollection? Do you recall being asked by the Immigration officer concerning whether or not Dr. Magdalena Berenyi was a member of the Hungarian Army?

A. He may not or he may. I don't recall.

Q. Was your memory good at that time?

A. Yes.

Q. Just as good today?

A. Yes.

Q. I will ask you this question now. Page 5, Question: "Do you know when she joined the Hungarian Medical Corps?" Were you asked this question?

A. If it is there, I was asked that question.

Q. Do you recall your answer?

A. I said, "Yes".

Q. What else did you say?

A. I don't remember.

Q. Did you make this statement? Answer: "Probably after graduation." Did you say that?

A. If you read it, probably I said that.

Q. Was it the truth?

A. I think I recall now, I think it was before graduation.

Q. You mean that in April of 1959 your memory was not as good?

A. Well, it was probably as good as now.

Q. But your memory is better today?

A. Maybe.

Q. Did you also, in response to the same question, state as follows: "I did not see her in uniform while she was a student." Did you say that?

A. If you read that. I don't recall what I said.

Q. Was it the truth?

A. I think I saw her in uniform no matter what I said.

Q. Were you sworn to the truth in April 1959?

A. Yes.

Q. Did you testify to the truth then?

A. Yes.

Q. Do you know when she joined the Hungarian Medical Corps, and your full and complete answer.

A. Probably after graduation. I did not see her in uniform while she was a student.

[fol. 205] Q. Was that the truth?

A. No, I recall now that I saw her in uniform as a student.

Q. You don't know when that was?

A. This was during this time.

Q. Is it your contention, doctor, and I just want to continue on cross-examination, that in order to be in the army of the Hungarian government and go to school, it was necessary to be a Communist?

A. No.

Q. You don't so state?

A. No.

Q. And the mere fact that Dr. Magdalena Berenyi was in uniform, as you now state, some time when she was a student, that did not make her a Communist?

A. No, I never said that.

Q. Doctor Kury, would you say that subsequent to graduation and becoming an officer in the Medical Corps of the Hungarian Army, is it your contention that membership in the Communist Party was a requirement?

A. No.

Q. That is, non-Communists could wear the uniform of the Hungarian Army?

A. Yes.

Q. And being a member of the Hungarian Army is not inconsistent with anti-Communism, is that right?

A. Well, as you say, there were many army units which joined the anti-Communist uprising.

Q. Have you anything to add now relating solely to Dr. Magdalena Berenyi, from your personal knowledge?

A. No.

Q. As to whether she was or was not a Communist?

A. I told you I know only what a man told me.

Q. Nothing else, is that right?

A. Yes.

By examiner: Statement taken on April 14, 1959, at 150 Tremont Street, Boston, Massachusetts, which is a Question and Answer Statement from Dr. Kury by T. R. Cass, Investigator for the Immigration and Naturalization Service. This statement will be entered into the record and marked as an exhibit.

[fol. 206] By counsel: Exception. It is completely improper to offer into evidence. It is a self-serving declaration. It is not evidence. The doctor is here to testify and the fact that I used it for cross-examination previously does not make it admissible.

By examiner: Overruled. There will be a fifteen-minute recess. We will resume at 12:15.

HEARING RESUMED

Counsel to witness:

Q. Dr. Kury, I am going to direct your attention basically to Dr. Kalman Berenyi. You have testified that twenty-member groups were organized for the purpose of studying in the afternoon, and you mentioned that these groups at the university first attended classes in the morning.

A. Yes, the regular classes.

Q. And thereafter had meetings in the afternoon. Is that right?

A. Yes.

Q. Were these theory meetings?

A. Yes.

Q. Do you know how these groups were organized?

A. I don't know. It was not organized by us. It was organized by the university or the Party.

Q. Do you know whether these groups of students were organized according to the latter names of the students, alphabetically?

A. I don't really recall, but it might have been.

Q. We are conceding that your last name starts with the letter "K," is that right?

A. Yes.

Q. We concede that Dr. Berenyi's last name starts with "B."

A. Yes.

[fol. 207] Q. And you still say you were a member of his group?

A. Yes. Even if it was organized alphabetically—I do not remember—it wouldn't concern him because he was in charge of the political education of the group.

Q. Doctor Kury, did these organized groups, the Tanulokor group, start in the freshman year?

A. I do not recall, probably a little earlier. I joined them in the Fall of 1948. But usually they were organized on a larger scale in the Fall of 1948.

Q. Were you assigned to a particular group?

A. Yes.

Q. Group 4, as you testified to?

A. Yes.

Q. Would I be right in saying that by that time you were in your junior year at the Medical School?

A. Yes.

Q. You belonged to no group before that, is that right?

A. I did not.

Q. Do you know if Dr. Kalman Berenyi belonged to that group before that?

A. I do not know.

Q. Did you know Dr. Kalman Berenyi before that date?

A. I know him by sight.

Q. So that we have the picture in the minds of everybody, would you say that, from the time you attended medical school in September 1946 until such time as you joined a study group more than two years later, as you described it, you had no knowledge whatever of Dr. Kalman Berenyi's political activities and thoughts?

A. I knew him by sight and I heard people speaking about him, but personal knowledge I did not have.

Q. Now, Doctor Kury, were you aware of Dr. Kalman Berenyi's standing in the class, scholastically?

A. I really did not know. I think he was a good student, if I recall, but I really don't know where he stood.

Q. What was your standing in the class scholastically in 1948?

A. We were not classified. I was a good student.

Q. Doctor Kury, you testified in response to Mr. Sullivan's examination this morning that you attended but one meeting one day and you then asked for a transfer?

A. Yes.

[fol. 208] Q. And this is the one meeting that you have testified to?

A. Yes.

Q. Your memory is good today.

A. Yes. My memory is sharp today because I hesitated whether to join or not and I remember this.

Q. Is it your testimony that membership in this group was not necessary under university regulations?

A. No.

Q. Doctor Kury, your memory is sharp that you attended but one lecture one afternoon and no more, in which Dr. Kalman Berenyi was a participant?

A. Yes.

Q. And your testimony is that during the alleged conversation at the group meeting Dr. Berenyi made a statement that he was a member of the Communist Party since 1945, took place on this one single occasion that you attended the meeting and no other, and your memory is good?

A. Yes.

Q. Doctor Kury, when you joined that group was it already in existence or was it just formed?

A. I don't know whether it was in existence but it was put out about a few days before the university started, in the dean's office, who are the leaders, and so forth.

Q. Doctor Kury, would I be right in saying that you joined about September 1948, when the semester opened?

A. Yes.

Q. The Junior year opened?

A. Yes.

Q. You got a transfer after one day of attendance?

A. I belonged officially for about three weeks and I only went once and never went back.

Q. Do you know whether that meeting was the first meeting of the semester?

A. Yes.

Q. Are you sure of that?

A. Yes.

Q. Is it your testimony that membership and attendance at these meetings was not necessary or obligatory under the rules of the university?

A. No, as a regular member of the group it was not necessary, except the person who was charged with the political education.

[fol. 209] Q. Did you tell the officer who examined you here in April 1959 that you attended but one meeting of this particular group?

A. I think I told that I was transferred after three weeks from the group.

Q. Did you tell the officer here that you attended meetings for three weeks?

A. No.

Q. Did you intimate that you were a member of this group for three weeks?

A. Yes, I was officially a member.

Q. What do you mean that you were officially a member of this group but you did not attend the meetings and you were not obligated to go? What does 'officially a member' mean?

A. It means that you are on paper registered as a member.

Q. But you are not obliged to go to any meetings, is that right?

A. No.

Q. And you could have dropped out without notifying the university, is that right?

A. No. You should tell them and ask them to transfer to another group.

Q. You are guessing.

A. They don't ask them. I told them I wanted to be transferred to another group.

Q. When did you make that application?

A. Which one?

Q. To be transferred.

A. Well, I think about a few days before the three weeks. I was hesitating whether to drop this whole thing completely. There was a lady in that other group whom I knew before and she told me this was a fine group.

Q. Doctor, was the group that you wanted to transfer to a group that intended to specialize in pathology?

A. No. This was just a general group. Pathology was just one subject which we were then studying.

Q. Well, did you ever tell the university that you wanted to transfer because the other group you wished to join was concentrating on pathology and that was your interest?

A. I don't remember what I said. I went to the dean's office or to the organization in charge of this and I said I would rather be in this group.

[fol. 210] Q. Did you give a reason?

A. I don't remember what I said.

Q. Doctor, were you asked this question on April 14, 1959, and did you give this answer: Page 4, Question, "To your knowledge was Berenyi a political group leader during the entire existence of the group?" Did you make this answer: "I don't know, I dropped out of his group after about three weeks." Did you make that answer?

A. Yes.

Q. Did you tell the officer who examined you that you attended only one meeting?

A. Officially I belonged—this was what was in my mind.

Q. Doctor Kury, do you remember who was the leader of the group that you joined?

A. Yes.

By Examiner: Objection.

By Witness: You mean the other one?

Counsel to Witness:

Q. Yes. Did you tell him or anyone else that you wanted to join and that was the reason for your wanting to transfer?

A. No. Officially I said I was afraid of Group 4. I might have said I was interested in pathology but this was just an excuse.

Q. Did you say it?

A. I might have said it.

Q. Did you make this statement on Page 4 of the question and Answer Statement: "Officially I requested and was permitted to join another group whose medcial leader was an Associate Professor of Pathology, the field in which I was interested. . . ."?

A. Yes.

Q. You remember making that statement?

A. This was not the true reason. I was not so much interested in pathology.

[fol. 211] Q. Now, Doctor, isn't it your testimony that all these groups, as you claimed them to be, had group leaders assigned to them to teach, advocate and propose Communism to the other members, and isn't it a fact, if that is true, the new group you joined had a group leader assigned to it for that same purpose?

A. Yes. All groups had a leader.

By Examiner: Objection.

Counsel to Witness:

Q. So it didn't matter what group you were in, so far as alleged Communist indoctrination was concerned?

A. It did, to the extent that the personalities of the group leaders was concerned, and the whole group.

Q. Doctor Kury, you judged Dr. Kalman's personality with one meeting, one speech by him, as you claim, and nothing else?

A. Yes. I heard about the other fellow, that he was very mild and very good.

Q. You mean he was a very good Communist?

A. He was a good Communist, he was enthusiastic about it. But he was a good man. Many people objected to his statements but he did not report them. He was forced to resign and somebody else took it over unfortunately, and he was fired from this group also around Christmas time.

Q. Doctor Kury, you sought to change your group from Group 4 to a different group because Dr. Berenyi, according to your standard, was not up to the standard of the other group leader, is that right?

A. Yes. I knew about this other fellow, who he was, and I knew several people in the other group.

Q. Were you turned in by Dr. Berenyi for not attending these group seminars for three weeks?

A. I did not meet him then, and then when I was transferred I did not tell them.

[fol. 212] Q. When you failed to attend the group seminars, as you testify, did anybody report you to the university dean that you were not in attendance?

A. Possibly I was reported, I do not know to whom or when.

Q. There was no action taken against you?

A. No.

Q. You remember quite well this first and only meeting in this Group No. 4?

A. I remember only some parts of it.

Q. Do you remember what month of the year?

A. September.

Q. 1948?

A. Yes.

Q. Do you remember the names of other members?

By examiner: Objection.

By witness: No, I am sorry, I do not remember but if you showed me photographs I probably would.

Counsel to witness:

Q. But you do remember Dr. Berenyi.

A. Well, he was the most important member of this group.

Q. You remember talking or discussing your school or university work at that meeting?

A. We were told in general what we would have to read, what we heard, and it was just a general discussion.

Q. Doctor Kury, isn't it a fact that Dr. Kalman Berenyi was the student group leader because of his knowledge and superior standing in the medical school, and he assisted others by helping in lecturing?

A. No, I do not think that was the deciding factor. The deciding factor was his Party membership.

Q. Doctor Kury, again I ask you to answer me. With relation only to the student work of studying, was Dr. [fol. 213] Berenyi one of the leaders?

A. He did not instruct us in medicine.

Q. I did not ask you that question.

A. No, he did not instruct us in medicine. He instructed us only in ideology.

Q. Again I ask you, at these mass group meetings relating to studies did any one, two or three particular students stand out and discuss medicine, your course of study and what you had to prepare for your seminars in college?

A. Yes.

Q. Did Dr. Berenyi participate actively in such course work and discussions?

A. As a political leader, no. He did not tell us what to study. He also study with us medicine. This was not his duty.

Q. Again, I will ask you. Don't fence with me. It is outrageous and I want this in the record—that the witness has a smirk on his face.

By Examiner: Counsel, stop harassing the witness.

Counsel to Witness:

Q. Doctor, when you studied in this group, whether it be in Group 4 or 19 or 37, in the afternoons after your course work, how did you study? Did you just sit and read the book or was there discussion about the studies?

A. Discussions.

Q. Did anybody discuss?

A. Yes, we all discussed.

Q. Did Dr. Berenyi, in the one time that you claim you attended his discussion group, participate in the discussions relating to medical studies?

A. Yes, everybody participated.

Q. And you participated also?

A. Yes.

Q. One time?

A. This was later on. It was not anything—(interruption by counsel).

[fol. 214] Q. Again I ask you, with reference to the group you were in with Dr. Berenyi, was there any discussions in medicine?

A. Yes.

Q. That one time and nothing else?

A. Yes, and for other purposes as to what we are to do.

Q. Doctor Kury, have you testified that Dr. Kalman Berenyi was in the army while a student?

A. Yes.

Q. Have you also testified that while you attended this one single meeting Dr. Kalman Berenyi advocated the going to see Soviet motion pictures?

A. I don't remember whether I testified but this was part of the duty of the political leader of the group.

By Counsel: Objection.

By Examiner: Note Counsel's objection, but the answer stands.

Counsel to Witness:

Q. Again I will ask you. When you testified that there was advocacy of seeing Soviet motion pictures, was your testimony based upon the belief or the supposition or the theory that that was a function of a group leader?

A. This was the function of a group leader, I am positive of it.

Q. I ask you to state under oath before the court and under oath here whether you recall today whether Dr. Kalman Berenyi stated in your presence in September 1948 that the members of your group should see Soviet motion pictures. Do you recall him making that statement word for word, yes, or no?

A. It was not his own initiative. The order was given to him like every group leader to do this. This was not his idea.

Q. Again I ask you, do you recall today that Dr. Berenyi, Kalman Berenyi, attempted to persuade you by word of [fol. 215] mouth, by saying something to you?

A. He did not say anything personally to me. He spoke generally to the group that the desire is that we go to see Soviet movie and to read books.

Q. Did he say anything else?

A. Just discussing in general the political situation.

Q. You tell us what he said.

A. What we read in the newspapers, and this would be in the meantime we would also study medicine.

Q. Did he talk about Hungarian newspapers?

A. Yes.

Q. What was in the newspapers?

A. Yes.

Q. And you could read Hungarian?

A. Yes.

Q. And he would tell you to read the papers?

A. He did not order me to read it, and we would discuss all we read.

Q. As I get it now, that what you claim what Dr. Berenyi is alleged to have said was that "in the future we will talk about what we read in the papers, medicine, or studies, and I suggest that you read books and see motion pictures made in Russia."

A. Yes.

Q. Nothing else?

A. Yes, that is right, generally.

Q. This took place one time, to your knowledge?

A. This was the only meeting that I went to.

Q. How long do you claim Dr. Berenyi spoke?

A. About fifteen minutes, I would say.

Q. Did he tell you and the other members of this group that he wanted you to join the Communist Party?

A. No.

Q. Did he tell you that he advocated your joining the Communist Party?

A. No.

Q. You testified that he told you and others that he was a member of the Party since 1945.

A. Yes.

Q. Are you sure of that? Did you make a written memorandum of that conversation?

A. No.

Q. But you remember it today?

A. Yes.

Q. He told you he was a member of the Party?

A. He told us that he was the most important member of the group.

[fol. 216] Q. Did he ever show you his membership card, if he ever had one in the Communist Party?

A. I saw one membership card in my life. This was not shown generally.

Q. You are not claiming that the one Communist Party membership card you saw was that of either of the two Doctors Berenyi?

A. No.

Q. After you dropped out of the particular group did you ever talk to Dr. Kalman Berenyi?

A. No, only to say good morning and other greetings on the street.

Q. Do you know whether Dr. Kalman Berenyi was in uniform of the Army Medical Corps before he graduated?

A. Yes.

Q. Did he wear a Communist button or insignia?

A. No, I don't remember.

Q. Do you know whether or not members of the Communist Party in the Medical Corps wore buttons or insignia denoting the fact that he was a prominent member?

A. No, it was not obligatory.

Q. I see. Is it your claim that everybody in the Army Medical Corps was a Communist?

A. No. I told you no.

Q. You are sure there were non-Communists there, too?

A. Yes.

Q. Are you sure?

A. Yes.

Q. Would you say that everyone who was allegedly a group leader had to be a member of the Communist Party?

A. Yes.

Q. Who told you that?

A. This was a general knowledge. I was told by the other group leader that they are.

Q. But you did know, to your own knowledge, is that right?

A. Yes. This was not a rumor.

Q. Did you ever see any membership rules of the Communist Party which would indicate that either of the two Doctors Berenyi were members of the Communist Party?

A. No. The membership rules were not shown publicly.

Q. Do you know anything at all whether Dr. Kalman Berenyi had any office in the Communist Party?

A. No, besides this I don't know.

[fol. 217] Q. You have no knowledge, is that right?

A. I did not belong to the Party so I did not know exactly who had any office.

Q. Am I correct in saying that other than this one alleged encounter with Dr. Kalman Berenyi this one day, you had no other knowledge of Dr. Kalman Berenyi?

A. Yes, as I told you before, that beside this I heard it from other people.

Q. Not from your own knowledge?

A. No.

Q. Did the other people tell you that he held office in the Communist Party?

A. I don't remember.

Q. When the study groups were discontinued by the school did you know whether Dr. Kalman Berenyi held office in the Communist Party?

A. I lost complete sight of him except when meeting him occasionally on the street at the university.

Q. Did anybody tell you that he held office in the Communist Party?

A. No. To be frank, I did not even ask.

Q. Were you out to hurt Dr. Kalman Berenyi when you testified before an investigator of this Service in 1959?

A. What do you mean?

Q. Were you out to hurt him?

A. No, not at all.

Q. Do you have any grudge against either of the two Doctors Berenyi?

A. No, I do not have any relation with them.

Q. When you were questioned by the investigator did he put words into your mouth and tell you what to say?

A. No.

Q. Were your answers given to him of your own free will?

A. Yes.

Q. Doctor Kury, I read to you a question and answer and ask whether you made that statement. Question: "Did you know Berenyi personally? Answer: "No, I was afraid to make the personal acquaintance of such a person." Were you asked that question and did you make that answer?

A. It seems— (interrupted by counsel)

[fol. 218] Q. Yes or no?

A. I refuse to answer.

Q. You refuse to answer?

By Examiner: Objection to the question.

By Witness:

A. It was not on personal grounds against him personally. It was on his Party membership.

Counsel to Witness:

Q. Were you asked this question: "Do you know anything about Berenyi's activities at the University after these groups were discontinued?" Answer: "After these groups were discontinued I know that he held some office in the Party." Did you say that?

A. Yes.

Q. Was that the truth?

A. No. I decided that I had to modify. At this time I don't know. He was not a Party secretary or anything that you would call an office, because I was probably wrong with this statement. He was instructing in Marxism and Leninism, but I would not call it an officer now. I think I was wrong to call it an officer.

Q. Dr. Kury, is it your testimony now that you know to your personal knowledge of any of the activities of Dr. Kalman Berenyi after the groups were discontinued?

A. This is not my personal knowledge. I was told by other persons.

Q. Thus, Doctor, you have no personal knowledge of any kind whatever.

A. Yes, I was told— (interrupted by counsel)

Q. When you said, in your examination in 1959, "I know that he held some office in the Party", you were not basing your knowledge on your own information but on what people told you, rumor and hearsay?

A. It was not rumor. I heard from someone who is here in the United States.

[fol. 219] Q. But you don't know to your personal knowledge.

A. Yes.

Counsel to Examiner: I have no further questions.

Examiner to Witness:

Q. Doctor Kury, would you say that in 1948 the University of Budapest Medical School was dominated by the Communists?

By Counsel: Objected to on the ground that there is no claim made here that either of the two petitioners for naturalization were in charge of the university. They were mere students, and it is immaterial whether they were Communists, Democrats or Republicans as far as the domination of the school is concerned. No claim is made here that these two doctors dominated the school.

By Examiner: Objection noted.

Examiner to Witness:

Q. Please answer the question.

A. Yes. The Communist Party was the most influential group in Hungary and it practically dominated every organization of this kind directly or indirectly.

Counsel to Witness:

Q. You are an avowed anti-Communist?

A. I was.

Q. And you tried to run away from Hungary while the Communists dominated the university?

A. Yes, I tried to run away in December 1949.

[fol. 220] Q. That was because you were anti-Communist?

A. Well, this is why I didn't want to stay in the Communist country.

Q. And with all this domination you were permitted to return to the university?

A. Yes.

Q. They knew that you were not a Party member?

A. Yes, but they did not know that I was in jail.

Q. Did the Communist government know you were in jail?

A. The police knew about it but they did not notify the university.

Q. Was your politics important for permission to attend the university?

A. What do you mean?

Q. Were your political beliefs important?

A. In 1946, at the time they admitted everybody from high school without politics. In 1948, 1949 and 1950 I think they had a special examination for admission.

Q. Was the political belief of the applicant for school an important factor then?

A. Yes.

Q. And when you obtained readmission in February of 1951, after you had been a drop-out and you were permitted to resume scholastic studies at the university, was your political opinion or your political evaluation important?

A. No.

By Examiner: Note my objection.

Counsel to Witness:

Q. And they took back a student who tried to flee Communist Hungary?

A. They did not know, because if they knew they would not take me back.

Counsel to Examiner: I have no further questions.

[fol. 221] Examiner to Witness:

Q. Doctor Kury, do you have anything further you wish to say?

A. No.

By Examiner: This preliminary examination will be reopened in Chicago at a later date.

I CERTIFY that the foregoing statement, consisting of Pages 1-34, inclusive, is a true and correct transcription of the stenographic notes taken by me in this case on August 21, 1964.

ETTA R. TAYLOR
Secretary (Stenographer)

[fol. 222]

GOVERNMENT'S EXHIBIT 1-C

UNITED STATES DISTRICT COURT

BOSTON, MASSACHUSETTS

In the matter of the petition of

KALMAN JOHN BERENYI

Petition No. 351469

to be admitted to become a citizen of the United States of America

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Preliminary examination continued before Designated Naturalization Examiner at 150 Tremont Street, Boston, Massachusetts on July 30, 1963.

PRESENT:

JOSEPH B. SULLIVAN
Naturalization Examiner

KALMAN JOHN BERENYI
Petitioner

CHARLES SPAR, Attorney-at-Law
In behalf of Petitioner

ETTA R. TAYLOR
Stenographer

Naturalization examiner Sullivan to petitioner:

Q. You are advised that I am a United States Naturalization Examiner authorized to administer oaths and take evidence in connection with naturalization proceedings. I

desire to question you in connection with your petition for naturalization. Do you understand?

A. Yes, I do.

[fol. 223] Q. You are not required to give any testimony which may tend to degrade you or incriminate you. However, if you give false testimony in this proceeding you may be prosecuted for perjury, the penalty for which is imprisonment for not more than five years or a fine of not more than $5000 or both. Do you understand?

A. Yes, I do.

Q. Any statements that you make in this proceeding may be used against you or any other person in this or any other proceeding, civil or criminal, by the Government of the United States. Do you understand?

A. Yes, I do.

Q. You are further advised that at this proceeding you have the right to be represented by a lawyer or any other person permitted to practice before this Service. Do you wish to be represented today?

A. Yes, I do.

Q. Will you please state the name and address of your attorney.

By counsel: My name is Charles Spar. I am a Member of the Bar for the State of New York, duly admitted to practice before the Immigration and Naturalization Service and the Board of Immigration Appeals. My office address is 160 Broadway, New York 38, New York. I am here today on behalf of this petitioner and we are prepared to proceed with this continued preliminary hearing.

Examiner Sullivan to petitioner:

Q. Do you have any difficulty understanding the English language?

A. No.

Q. Under the circumstances are you willing to be sworn and testify under oath?

A. Yes.

Q. Please stand and raise your right hand (complies). Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

A. Yes, I do.

[fol. 224] Q. What is your full and correct name?

A. Kalman J. Berenyi. The "J" is for John.

Q. Have you ever been known by any other names?

A. No.

Q. Where do you reside?

A. 285 Crafts Street, Newtonville 60, Massachusetts. In five days my residence will be 130 Boylston Street, Chestnut Hill 02167, Newton, Massachusetts.

Q. Are you the same Kalman John Berenyi who filed Petition No. 351469 in the Office of the Clerk of the United States District Court at Boston, Massacuhsetts, on January 30, 1962?

A. Yes, I am.

Q. I present proposed Exhibit No. 1-A for identification, to be admitted in evidence as part of the record. This is a record of the sworn Question and Answer Statement dated September 24, 1957, taken by Investigator Robert L. Lyness at 70 Columbus Avenue, New York, New York. Are you the Kalman Berenyi mentioned as the respondent in this Question and Answer Statement?

A. Yes, I am.

Q. Do you have any objection to this Question and Answer Statement being introduced into the record as an exhibit?

By counsel: (After examination) We will stipulate that this is a sworn statement taken at 70 Columbus Avenue, New York City, on September 24, 1957, from Dr. Berenyi; that it was taken in the Hungarian language in the presence of a Hungarian interpreter and that the petitioner here swore to the truth of this statement. It is his statement. There is no objection to its being admitted into evidence.

Examiner Sullivan to petitioner:

Q. I now present for identification a Question and Answer Statement, to be introduced as Exhibit 1-B for ad- [fol. 225] mission into evidence and made part of the record. This Question and Answer Statement was taken on January 13, 1959, by Investigators Edward L. Morel, Jr., and Samuel H. Zutty at 70 Columbus Avenue, New York City, New York, in which you are the respondent. Do you have any objection to the exhibit being introduced in evidence and made a part of the record?

By counsel: The statement offered into evidence at this time is a statement by the petitioner here and made as set forth. No objection to its being admitted into evidence as part of this record.

Examiner Sullivan to petitioner:

Q. I now present for identification and admission in evidence as part of the record, to be identified as Exhibit 1-C, Form N-400, Application to File Petition for Naturalization, signed and sworn to by you on January 30, 1962, at 150 Tremont Street, Boston, Massachusetts. Is that your signature?

A. (After examination) Yes, it is.

Q. Do you have any objection to this Form N-400 being admitted into evidence as Exhibit 1-C and made a part of the record?

By counsel: There is certainly no objection to the admission of the N-400 into evidence, with this one notation: that the doctor had failed to disclose his membership in a school organization while living in Hungary, to wit, the MEFESZ, which stands for the following: Magyar Egyetemistak Foiskolasok Szervezete. This is a non-political student organization. I understand that he later corrected his petition application by giving this information to an immigration officer. No objections to the N-400 being admitted into evidence.

[fol. 226] Examiner Sullivan to petitioner:

Q. I now present an affidavit signed and sworn to before me on February 19, 1962, at Boston, Massachusetts. This affidavit will be marked Exhibit 1-D and admitted in evidence as part of the record. Do you have any objection?

By Counsel: (After Examination) There is no objection.

Examiner Sullivan to petitioner:

Q. I now present a Question and Answer Statement taken by me from you on May 22, 1962. This will be introduced as Exhibit 1-E for admission into evidence and made a part of the record. Do you have any objection to this statement being entered into evidence?

By counsel: (After examination) I will concede that this statement which is offered as Government's Exhibit 1-E is an accurate transcription of a sworn statement taken on May 22, 1962, of this petitioner and that the statements therein contained are still his statement as of this date.

Examiner Sullivan to petitioner:

Q. In your application to file petition for naturalization (Exhibit 1-C) Question 9 reads as follows: "Do you believe in the U. S. Constitution and form of Government of the United States?" Your answer was "Yes." Is this still your answer?

A. Yes.

Q. In Question 10, "Are you willing to take an unqualified oath of allegiance to the United States?", you answered "Yes." Is your answer still yes?

A. Yes.

Q. Do you want it definitely understood that you are willing to take an oath of allegiance to the United States [fol. 227] without any mental reservation or purpose of evasion?

A. Yes.

Q. Doctor, have you been admitted to practice medicine in the State of Massachusetts?

A. Yes.

Q. Any other states?

A. Yes.

Q. What are the dates?

A. I don't remember the exact dates but it was in 1959, in the State of Illinois, and June 1960 in the State of Virginia. In September 1960 in the State of Massachusetts. I still hold these licenses.

Q. Doctor, was there any required period of residence prior to taking the medical examinations in either of these states?

A. No. I resided, and am still residing, in Massachusetts when I took the State Board Examinations in Illinois and Virginia, because I was prepared for other examinations in case I have any opportunity there for jobs to practice I could well use these licenses.

Q. How long did you stay in Illinois and Virginia prior to taking the examinations?

A. I travelled to Chicago and stayed there five days. I took my license examination there and left Chicago. I was notified later that I had successfully passed the examination and was admitted like all other doctors.

Q. Was that the same for Virginia?

A. Yes.

Q. Doctor, you have consistently testified that you have never at any time during your life been a member of the Communist Party or any affiliate thereof. Are you still of the same opinion?

A. Yes, I am.

Q. Do you wish to make any further statements?

By Counsel: I would like to make a statement to clear the record. Residence in a sister state is not necessary in order to take a license examination to practice medicine. Dr. Berenyi is regularly employed by the New England Center Hospital with a rating as Assistant in Anaesthesi-

ology. He also has the standing of full time instructor in [fol. 228] anaesthesiology at Tufts University Medical School. He does not practice medicine on a private-patient basis. The statements that he has made in all prior affidavits and in Question and Answer Statements in reference to interrogation by immigration and naturalization officers, whether they be in New York or in Massachusetts, have consistently set forth his denial of any Communist Party membership at any time. He is steadfast in that statement and I submit, as his attorney, that unless the Government produces evidence to the contrary of a nature admissible as evidence in court in this particular proceeding, that the questions concerning his alleged membership as set forth above be terminated. He is willing, however, to face any witnesses, examine any testimony, refute or rebut any such evidence if any be submitted.

Examiner Sullivan to Petitioner:

Q. Do you further want it definitely understood that you never advocated, expounded or collaborated politically with the Communists at any time during your lifetime?

A. I never collaborated with them.

Q. Is it your intention to reside permanently in the United States?

A. Yes.

Q. Is there anything further you wish to say?

A. I would like to live in this country. I would like to work for the people here. I think you have seen about my record in this country, how I worked and where I worked. I would like to become a citizen of the United States and would like to know when that will be. I am attached to the principles and the Constitution of the United States, as I stated before, and I am willing to take an unqualified oath of allegiance to the United States, and if it is necessary I would gladly bear arms in defense of the United States, its integrity and policies.

[fol. 229] Q. Do you feel that you have had a fair hearing here today?

A. Yes, I do.

By Counsel: Mr. Sullivan, I am perfectly satisfied that you were fair and that you treated the petitioner with proper dignity.

I certify that I have read the foregoing statement, consisting of Pages 1-7, inclusive, and solemnly swear that it is a true and correct transcript of statements made by me on July 30, 1963, at Boston, Massachusetts.

.....

Petitioner

[fol. 230]

GOVERNMENT'S EXHIBIT 1-D

(See opposite) ☞

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UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Form approved.
Budget Bureau No. 43-R012.7.

Mail or take to:
IMMIGRATION AND NATURALIZATION SERVICE

EN REGISTRATION

(Show the exact spelling of your name as it appears on your alien registration receipt card, and the number of your card. If you did not register, so state.)

Name KALMAN BERENYI
No. [illegible] 295

APPLICATION TO FILE PETITION FOR NATURALIZATION

(See INSTRUCTIONS, page 5. BE SURE YOU UNDERSTAND EACH QUESTION BEFORE YOU ANSWER IT.)

I desire to file a petition for naturalization in the Date: 11-15-61

96 S.D.C. Court at Boston, Mass.
(Name of Court) (City) (State)

KALMAN JOHN BERENYI
(Print or type here your present full name)

285 CRAFTS STREET, NEW
(Print or type present address, including street number, city, county, and State)

NEWTONVILLE 60, MIDDLESEX MASSACHUSETTS
(City) (County) (State)

2901 306

(Print or type here any other name you have ever used, including maiden name)

(1a) Was your father or mother ever a United States citizen? ☐ Yes ☒ No. If "Yes" explain fully separately.

(1b) Can you read and write English? ☒ Yes ☐ No. Speak English? ☒ Yes ☐ No. Sign your name in English? ☒ Yes ☐ No.

(2) In what places in the United States have you lived during the last 5 years? List present address first. CONTINUED

From—	To—	Street Address	City and State
(a) JULY 1, 1961	Present Time	285 CRAFTS STREET,	NEWTONVILLE 60, MASS.
(b) DECEMBER 5, 1956	DECEMBER 20, 1956	1549 TOWNSEND AVE	BRONX 52, NEW YORK N.Y.
(c) DECEMBER 21, 1956	DECEMBER 31, 1957	CONEY ISLAND HOSPITAL 8225 AVE	BROOKLYN 35, NEWYORK, N.Y.
(d) JANUARY 1, 1958	MARCH 15, 1958	1549 TOWNSEND AVE	BRONX 52, NEWYORK, N.Y.
(e) MARCH 16, 1958	JUNE 30, 1958	280 SPRINGFIELD AVE	HASBROUCK HEIGHTS, N.J.

(3) What were the names, addresses, and occupations (or types of business) of your employers during the last 5 years? (If none, write "None.") List present employment first. CONTINUED

From—	To—	Employer's Name	Address	Occupation or Type of Business
(a) JULY 1, 1961	Present Time	NEW ENGLAND CENTER HOSPITAL	171 HARRISON AVE BOSTON 11 MASS	PHYSICIAN ANESTHETIST
(b) DECEMBER 21, 1956	DECEMBER 31, 1957	CONEY ISLAND HOSPITAL	BROOKLYN 35, NEW YORK, N.Y.	INTERN
(c) JANUARY 8, 1958	MARCH 15, 1958	ROYAL HOSPITAL 2021	GRAND CONCOURSE, NEW YORK	HOUSE PHYSICIAN
(d) MARCH 16, 1958	JUNE 10, 1958	HASBROUCK HEIGHTS HOSPITAL	214 TERRACE AVE HASBROUCK HEIGHTS	N.J. HOUSE PHYSICIAN
(e) JULY 1, 1958	JUNE 30, 1959	THE MOUNTAINSIDE HOSPITAL	MONTCLAIR, N.J.	RESIDENT PHYSICIAN

(4) Have you been out of the United States since you first arrived? ☒ Yes ☐ No. If "Yes" fill in the following information for every absence of *less than 6 months*.

Date Departed	Date Returned	Name of Ship, or of Airline, Railroad Company, Bus Company, or Other Means Used To Return to the United States	Place or Port of Entry Through Which You Returned to the United States
Made a trip to Canada for about 2 days.			
No Other			

(5) How many times have you been married? ONCE How many times has your husband or wife been married? ONCE
If either of you has been married more than once, fill in the following information for each previous marriage.

	Date Married	Date Marriage Ended	Name of Person to Whom Married	Sex	(Check one) Person Married Was: Citizen ☐ Alien ☐	How Marriage Ended
(a)					☐ ☐	
(b)					☐ ☐	
(c)					☐ ☐	
(d)					☐ ☐	

E-1

Form N-400 (Rev. 8-1-61)

(OVER)

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(6) Have you ever, in the United States or in any other place, (a) committed any crime, or broken any law, ordinance or regulation, for which you have not been arrested? ☐ Yes ☒ No; (b) been arrested, charged, convicted, fined, or imprisoned for breaking or violating any law, ordinance, or regulation? ☐ Yes ☒ No. If you answer "Yes" to (a) or (b), give the following information as to each incident:

When	Where (City) (State) (Country)	Nature of Offense	Outcome or Case
(a)			
(b)			
(c)			
(d)			
(e)			

(7) List each organization, association, fund, foundation, club, or society in the United States or in any other place that you have been a member of at any time, and the dates of membership in each. (If none, write "None.") NONE

(a) HUNGARIAN ARMY - PHYSICIAN - 1947 to 1956
(b) MEDICAL STUDENT - WHILE IN ARMY - 1942-1945 19 to 19
(c) 19 to 19
(d) 19 to 19
(e) No other 19 to 19
(f) 19 to 19
(g) 1/30/57 19 to 19

(8) Have you ever, in the United States or in any other place, (a) been a member of, or in any other way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person? ☐ Yes ☒ No; (b) given anything of value to the Communist Party, or to another organization, group, or person cooperating with that Party? ☐ Yes ☒ No; (c) believed in, taught, or advocated communism? ☐ Yes ☒ No.

(9) Do you believe in the U.S. Constitution and form of Government of the United States? ☒ Yes ☐ No.

(10) Are you willing to take an unqualified oath of allegiance to the United States? ☒ Yes ☐ No.

(11) Have you ever been a patient in a mental institution, or have you ever been treated for a mental illness? ☐ Yes ☒ No.

(12) Are deportation proceedings pending against you, or have you ever been deported or ordered deported, or have you ever applied for suspension of deportation or for preexamination? ☐ Yes ☒ No.

(13) Do you owe any Federal taxes? ☐ Yes ☒ No. State last year for which you filed a Federal income tax return 1957 - MASS

(14) Have you ever represented yourself to be a United States citizen? ☐ Yes ☒ No.

(15) If male, did you ever register under United States Selective Service laws or draft laws? ☒ Yes ☐ No. If "Yes" give date you registered DECEMBER 26, 1956. Were you ever exempted from service because of conscientious objections, alienage, or other reasons? ☐ Yes ☒ No. If "Yes," state reasons 3-A, Before I Entered Army

(16) If you ever served in the Armed Forces of the United States, state branch ; from , 19, to , 19; Service No. ; type of separation (Honorable, Dishonorable, etc.); reason for separation: ☐ alienage ☐ conscientious objections ☐ other (If "other" state details)

(17) If the law requires it, are you willing (a) to bear arms on behalf of the United States? ☒ Yes ☐ No; (b) to perform noncombatant services in the Armed Forces of the United States? ☒ Yes ☐ No; (c) to perform work of national importance under civilian direction? ☒ Yes ☐ No.

(18) Have you ever deserted from the military, air, or naval forces of the United States while this country was at war? ☐ Yes ☒ No. Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military, air, or naval forces of the United States? ☐ Yes ☒ No.

(19) The law provides that an applicant for naturalization shall not be regarded as a person of good moral character who, at any time during the period of residence required for naturalization, advocated or practiced polygamy, got his or her income principally from illegal gambling activities; has committed adultery; has been a prostitute; has procured any person for the purposes of prostitution; has been a narcotic drug addict; or has dealt in narcotic drugs illegally in any way. Have you at any time, either within or outside the United States, ever been such a person or ever committed any of these acts? ☐ Yes ☒ No.

2901 307

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3-1469 3

STATEMENT OF FACTS FOR PREPARATION OF PETITION
SECTION OF LAW 316A

ALIEN REGISTRATION
Name KALMAN BERENYI
No. A 10 927 995

(1) My full, true, and correct name is KALMAN JOHN BERENYI
(Full, true name, without abbreviation)

(2) My present place of residence is 285 CRAFTS Street NEWTONVILLE, MIDDLESEX, MASS.
(Number and street) (City or town) (County) (State)

(3) My present occupation is PHYSICIAN

(4) I was born on AUGUST 7 1928 in BUDAPEST HUNGARY
(Month) (Day) (Year) (City or town) (County, district, province, or State) (Country)

(5) My personal description is as follows: Sex MALE; complexion FAIR; color of eyes BLUE; color of hair BROWN; height 5 feet 11 inches; weight 165 pounds; visible distinctive marks NONE; country of which I am a citizen, subject, or national HUNGARY

(6) I (am, ~~am not~~) married; the name of my wife ~~or husband~~ is MAGDALENA R. ~~[illegible]~~ nee REISNER; we were married on JUNE 1952 at BUDAPEST HUNGARY;
(Month) (Day) (Year) (City or town) (State or country)

he ~~or she~~ was born at BUDAPEST HUNGARY
(City or town) (County, district, province, or State) (Country)

on AUGUST 28 1927; entered the United States at NEW ARK, NEW JERSEY
(Month) (Day) (Year) (City or town)

N. J. on DECEMBER 4 1956 for permanent residence in the United States and
(State) (Month) (Day) (Year)

now resides ☒ with me; ☐ apart from me
☐ at
(Show full address if not living with you)

~~He~~ was naturalized on (Month) (Day) (Year) at (City or town) (State)

Certificate No. Not Given or became a citizen by

(7) I have none living children, as follows. (Complete all columns as to each child. If child lives with you, state "with me" in last column; otherwise, give child's full address.)

NAME	SEX	PLACE BORN	DATE BORN	NOW LIVING AT—
			Holiday	

[fol. 232]

(8) My lawful admission for permanent residence in the United States was at NEWARK (City or town) N.J. (State);

under the name of ~~Joseph~~ Tiffany KALMAN BERENYI on DECEMBER (Month) 4 (Day) 1956 (Year)

on the AIRPLANE SPONSORED BY NCWC (FOR HUNGARIAN REFUGEES)
(Name of vessel or other means of conveyance)

(9) Since such lawful admission, I have not been absent from the United States for a period or periods of 6 months or longer except as follows (if none, state "None"): NONE

DEPARTED FROM THE UNITED STATES			RETURNED TO THE UNITED STATES		
POINT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE	POINT	DATE (Month, day, year)	VESSEL OR OTHER MEANS OF CONVEYANCE

(10a) I have resided continuously in the United States of America since DECEMBER 4, 1956 and continuously in the State of MASSACHUSETTS where I now live since JULY 1, 1959 and during the past 5 years I have been physically present in the United States for an aggregate period of 60.5 months. (over)

(10b) Do you intend to reside permanently in the United States? ☒ Yes ☐ No.

If "No," explain:

2901 308 245

(11) I (have, have not) heretofore made petition for naturalization No. ..... on ..... (Month) (Day) (Year)

at ..... (City) ..... (State) in the ..... Court, wh... ...denied because

.....

(12) I wish the naturalization court to change my name to ..... (Give full name desired)

(13) My last place of foreign residence was BUDAPEST (City) HUNGARY (Country)

(14) My father's full name is KALMAN BERENYI

(15) My mother's maiden name was ZSUZSANNA BOROS

(16) I migrated to the United States from the port of VIENNA (City) AUSTRIA (Country)

(17) The person in the United States to whom I was coming was MR. JOSEPH RAY

(18) The place in the United States to which I was going was 1549 TOWNSEND AVE, BRONX 52, NEW YORK, N.Y.

(19) The names of some of the passengers or other persons I traveled with, including members of my own family and their relationship to me, if any, are MAGDALENA BERENYI, MY WIFE

Kalman J. Berenyi (Signature of applicant)

285 CRAFTS STREET, NEWTONVILLE 60 MASS (Address at which applicant receives mail)

TO APPLICANT: DO NOT FILL IN BLANKS BELOW THIS LINE.

NOTE CAREFULLY.—This application must be sworn to before an officer of the Immigration and Naturalization Service at the time you appear before such officer for examination on this application.

AFFIDAVIT

I do swear that I know the contents of this application comprising pages 1 to 4, inclusive, and the supplemental forms thereto, No(s) ....., subscribed to by me; that the same are true to the best of my knowledge and belief; that corrections numbered (1) to (1) were made by me or at my request; and that this application was signed by me with my full, true, and correct name, SO HELP ME GOD.

Kalman Kalman John Berenyi (Complete and true signature of applicant)

Subscribed and sworn to before me by applicant at the preliminary investigation ..... at Boston Mass.

this 30 day of June, 1960

I certify that before verification the above applicant stated in my presence that he had (heard) read the foregoing application and supplemental form(s) and understood the contents thereof. J. B. Sullivan (Naturalization examiner)

He [illegible] Incidents on Flux Card.

(For demonstration of applicant's ability to write)

(1st witness) MICHAEL M. MALAMUD ~~MR. HARRY FEAM~~ Occupation ~~PHYSICIAN~~ SALESMAN

residing at ~~453 MARLBORO ST~~ ~~1549 TOWNSEND AVE BRONX 52 NEW YORK N.Y.~~ BOSTON MASS (Street address, city or town, and State)

(2d witness) AVRUM M. NOVITCH ~~MR. ARNOLD N. BRODY~~ Occupation ~~PHYSICIAN~~ DR US ARMY

residing at ~~34 MANET RD CHESTNUT HILL MASS~~ ~~2301 OCEAN AVE, BROOKLYN 29, NEW YORK, N.Y.~~ (Street address, city or town, and State)

U.S. ..... State ..... Physical presence ..... mos. (Naturalization examiner)

ARRIVAL RECORD FOUND

Place .....
Name .....
..... Age .....
Date ..... Marital status .....
Manner .....

ARRIVAL RECORDS EXAMINED

Card index .....
Index books .....
Manifests .....

..... (Signature of person making search)

Nonfiled ..... (Dates, reasons, and examiner's initials)

[fol. 233]

246

2901 309

SEPARATE ANSWER SHEET

2.	FROM	TO	STREET ADDRESS	CITY AND STATE
f.	JULY 1, 1958	JUNE 30 1959	301 CENTRAL AVE	ORANGE, N.J
	JULY 1, 1959	JUNE 30, 1961,	202 COMMONWEALTH AVE,	BOSTON 16, MASS.

3	FROM	TO	EMPLOYER'S NAME	ADDRESS	OCCUPATION
f.	JULY 1, 1959	JUNE 30, 1961	L.V. HAND, M.D. ASSOCIATES, F.J. AUDI, M.D.	NEW ENGLAND DEACONESS HOSPITAL BOSTON 15, MASS	RESIDENT PHYSICIAN

Supp #1

[fol. 234]

[fol. 235]

GOVERNMENT'S EXHIBIT 1-E

Alien Registration No. 10 927 995

Application to Petition
For Naturalization
of
KALMAN JOHN BERENYI
Petition No. 351469

I am an Officer of the Department of Justice, Immigration and Naturalization Service. My name is Joseph B. Sullivan. I am a General Attorney (Nationality) and I desire to take a further statement from you concerning your petition for naturalization. Any statement you make must be made voluntarily and of your own free will. It is my duty to warn you that any statement you make may be used against you by the government as evidence in any criminal or civil procedings. Are you willing to make such a statement under oath?

A. Yes.

Q. Do you solemnly swear that all the statements you are about to make will be the truth, the whole truth and nothing but the truth, so help you God?

A. I do.

Q. What is your full and correct name?

A. Kalman John Berenyi.

Q. Where were you born?

A. I was born in Budapest August 7, 1928.

Q. Will you please explain briefly where you have resided from the time of your birth to the time you came to the United States?

A. I lived in Budapest as long as I was in Hungary and I lived with my parents in the XIV District Francia-Ut

49 D until 1944. We moved from this home to another on the same street 49B where my parents still live at the same address. I lived there with them until January 3, 1949 when I moved to Honved Kollegium which address was the VIII District Ulloi-Ut 80. I was there until the Kollegium moved from there to the XI District Nagyboldo-[fol. 236] gasszony-Utja No. 25. I lived there until July of 1952. I got married in June 7, 1952 and as soon as I graduated from Medical School then I became a medical health officer in the army. I moved into my wife's apartment which was in the VIII. District Nepszinhaz-Utca No. 40. I lived at this address until I left Budapest, Hungary in 1956. During the four years as an officer in the army, my group moved from one place to another so I changed my place every once in a while, but my basic address was always my wife's.

Q. I present for your inspection Petition No. 351469 filed in the United States District Court on January 30, 1962. Is that your signature and is that your petition?

A. Yes.

Q. Please explain briefly all the schools you have attended.

A. I had four years of elementary schools from 1934 until 1938 in the 14th District of Budapest, Hungary. From 1938 until 1946 I studied in high school. We had eight years of high school in the 4th District of Budapest. It is called Eotvos Jozsef Gymnasium for boys. I graduated from that high school in 1946 and I was accepted by the Budapest University Medical School, Budapest Orvostudomamyi Egyeten. I graduated from the medical school in July 1952 and that was all my education.

Q. What happened upon completion of medical school?

A. As I mentioned briefly when I graduated from medical school I was appointed as Medical Officer of the Hungarian Army in the rank of First Lieutenant.

Q. Is that the highest rank you obtained?

A. No, I had the rank of Captain when I left the country.

Q. When you went to medical school who paid the tuition?

A. I paid it until I entered the Honved Kollegium in January 3, 1949 and from then on I was supported by the Hungarian Army.

Q. Did you ever receive any scholarship during your school career?

A. No.

[fol. 237] Q. Were your parents considered wealthy?

A. No, they are supposed to be of low middle class. My father was a conductor of the Budapest street car company for twenty-five years and he became controller later. He retired a few years ago because of poor health.

Q. What standing did you have in school?

A. I was the top ten. I graduated with Cum Laude.

Q. I now present for your inspection Form N-400, Application to File Petition for Naturalization, filed by you on January 30, 1962, is that your signature?

A. Yes, it is.

Q. In answer to question 7, namely, list each organization, association, fund, foundation, club or society in the United States or in any other place that you have been a member of at any time, and the dates of membership in each. (If none, write "None".) Your answer given was Hungarian Army, Physician, from 1949 to 1956; medical student while in the Army from 1949 to 1952. Is that correct?

A. Yes.

Q. I now present for your inspection an affidavit signed by you on the 19th day of February 1962, is that your signature?

A. Yes.

Q. You stated at that time that you were a member of the Magyar Egyetemistak Foiskola-Sok Szervezete which was known as a student organization, is that correct?

A. Is right.

Q. They sponsored social and sports activities?

A. That is correct.

Q. Were you ever a member of the Medikus Kor?

A. Everybody was a member. That was part of the MEFESZ, it was an integral part of the MEFESZ.

Q. Did you belong to any Communistic organizations while attending the University or the Hungarian Army?

A. No.

Q. How long were you in these organizations?

A. I was in the Hungarian Army from 1949 until 1956 [fol. 238] and a member of the MEFESZ Medikus Kor until 1948 or 1949 when the Minister of Interior dissolved the organization.

Q. Did you hold any position in this organization?

A. No.

Q. You never held any title of leadership?

A. No.

Q. Did you attend meetings?

A. Yes.

Q. What discussions or subjects were discussed at these meetings?

A. Cultural, medical and once in a while political.

Q. Did you ever discuss Marxism or Leninism?

A. Yes, we were given every once in a while lectures concerning these topics.

Q. How often were these meetings held?

A. Not regularly, about once a month. Quite irregularly.

Q. Were these meetings held for the purpose of converting to the Communist Party?

A. Not basically, this was not the main function of the MEFESZ.

Q. What was the main function?

A. To give an opportunity to medical students to have some cultural & sport activities and exchange medical views concerning medical topics.

Q. Have you ever at any time and at any place been a member of the Magyar Kommunista Partja?

A. No.

Q. Have you ever at any time and at any place been a member of the Magyar Dolgozok Partja?

A. No.

Q. It has come to our attention that you have been a member of the Communist Party, that you were known and

considered by the general public to have worn the emblem and made pro-communist speeches, is that true?

A. It is not true.

Q. Further information came to our attention that you were one of twelve leaders of the Communist Party in the university while you attended the university, is that true?

A. No.

Q. You previously mentioned that your tuition at the college was paid by yourself, is that true?

A. Until 1949.

[fol. 239] Q. Where did the money come from?

A. I got it from my parents.

Q. How much was it?

A. Very little because you paid less if you had good marks.

Q. Was it not actually a fact that because of your membership in the Communist Party you paid less?

A. No, it was not so.

Q. We have further information that you have attended Communist Party meetings, is that correct?

A. No.

Q. Did you attend any open party meetings?

A. In the medical school they were not meetings. The whole school came together and talked about the Russian Revolution and I was there too. As years went by the meetings were held more open.

Q. Why would it be said about you that you were embracing Communism by other people if you were not a member according to our information?

A. I think the cause of this is that after the immigrants came here in 1956 there was tremendous wave of information given against each other to the United States government, and I don't really know for what reason. Perhaps, hoping they would get better evaluation or personal gain.

Q. How did you get along with the Communists at the university and in the army?

A. Well, you had to get along with them.

Q. Would you say that any promotion you may have received was due to your Communistic leanings?

A. No.

Q. While you were at the university did you know any of these Communist leaders by name?

A. Yes, we were classmates. As medical students we knew each other, some were Communist leaders and others not.

Q. How about yourself?

A. I was not.

Q. Were you ever at any time a member of the Communist Party and embrace the Communistic principles and later changed your Communistic leanings?

[fol. 240] A. No, I was not a member of the Communist Party and in this way I did not change my leanings toward Communism.

Q. Were you familiar with the term 'Communist Front'?

A. We did not have anything like that. It wasn't called this way, it was NEP front.

Q. Have you ever been a member of any organization which was an affiliate of the Communist Party?

A. No.

Q. You want it definitely understood that during your lifetime you have never been a member of the Communist Party or any affiliate thereof, or received any special benefits from the Communist Party, is that correct?

A. That is correct.

Q. Were you ever approached to join the Communist Party?

A. Yes, I was.

Q. How and in what manner were you approached to join the Party?

A. In the army we had a platoon and in every platoon there was a Communist agent who had to work on the Communist indoctrination, and this man had one of his lieutenants try to convert more and more people to the Communist Party, and occasionally he approached me in this way.

Q. What was your reaction?

A. You can't give straight answers and I said I don't think I am ready for this "Honor". You can't say straight I don't want it.

Q. What has been and what is now your feeling toward the Communist Party?

A. I recently since our last conversation got something against them. They denied my parents to leave the country and I expected to meet them on neutral grounds and they denied it and I feel hostile against them.

Q. Is this always your feeling?

A. Yes.

Q. Did you ever believe in the principles of Communism?

A. No.

Q. Do you believe in the and are you attached to the principles of the United States Constitution?

A. Yes, I do believe.

[fol. 241] Q. Are you ready and willing to take an unqualified oath of allegiance to the United States Government, if permitted?

A. Yes.

Q. Do you desire to make any further statements?

A. No.

Q. Do you know of any known Communists that are in the United States at this time?

A. No, I don't.

.....

.....

Joseph B. Sullivan
General Atorney (Nationality)

.....

Date

[fol. 242]

GOVERNMENT'S EXHIBIT 1-F

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
150 Tremont Street
Boston, Massachusetts

RECORD OF SWORN STATEMENT

File No. A-10 927 995
A-10 927 996

In re: BERENYI, Kalman (H)
BERENYI, Magdalena (W)

PRESENT

Witness, Dr. GYORGY KURY (A-10 992 710)
Investigator, T. R. Cass
Stenographer, Mary F. Moore

PLACE: USINS, 150 Tremont St.,
Boston, Massachusetts

LANGUAGE: English
INTERPRETER: None

DATE: April 14, 1959

Investigator Cass to Witness:

Q. I am an Investigator of the United States Immigration and Naturalization Service, authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to question you under oath concerning a matter of interest to the government. You are advised that any statement you make must be voluntary and

that it may be used by the Government as evidence in any [fol. 243] proceedings it may see fit to institute. Do you understand?

A. Yes.

Q. Are you willing to testify before me at this time under these conditions?

A. Yes.

Q. Please stand and raise your right hand. (Complies). Do you solemnly swear that all the statements you are about to make will be the truth, the whole truth, and nothing but the truth, so help you God?

A. Yes.

Q. What is your full and complete name?

A. Dr. GYORGY KURY.

Q. Have you ever used or been known by any other name?

A. My father's name was CSERMAK. My father died when I was one year old. My uncle on my mother's side adopted me and his name was KURY, and at the age of seven I took my adoptive father's name.

Q. When and where were you born?

A. May 26, 1928, Jazkiser, Hungary.

Q. When and where did you enter the United States?

A. Newark, N. J., June 14, 1957, as a parolee.

Q. What is your present address?

A. During the week I live at 309 Beacon St., Boston, Mass., on the weekends I live with my wife at Woods Hole, Mass.

Q. Where are you presently employed and what is your occupation?

A. I am a Research Fellow in Neuropathology at Harvard Medical School.

Q. You are a graduate of the Medical University of Budapest. Is that correct?

A. Yes.

Q. Was that medical school also known as the Pazmany-Peter Medical School?

A. When I entered the school was called the Pazmany-Peter Medical School. The Communist Government changed the name in 1949 or 1950.

Q. During what years did you attend the Medical University of Budapest?

A. I entered the University in 1946 and I graduated in 1954.

Q. Were you attending the University during that entire period?

A. No, I was imprisoned for one year for trying to [fol. 244] escape from Hungary and while in prison I became sick and was out of the University for one year during my illness in 1951.

Q. Were you at any time a member of, or affiliated in any way with the Hungarian Communist Party?

A. No, never.

Q. Did you belong to any organization, political or otherwise?

A. After my graduation I belonged to a medical trade union for about six months.

Q. Were you ever a member of the Mefesz or the Disz?

A. No, I did not join either one of these organizations for fear that my arrest and imprisonment in 1950 for attempting to escape from Hungary might be made known to the University which could result in my being dropped as a student.

Q. Did you serve in the Hungarian Army?

A. No, I was found to be medically exempt.

Q. How were you occupied between 1954 and the Revolution of October 1956?

A. After graduation from Medical School in June 1954 I tried to remain in Budapest. The Ministry of Health did not want me to remain in Budapest so that for six months I was unemployed. In January 1955 I went to a hospital in Eger, Hungary where I remained for about two months. I then went to a hospital in Gyongyes, Hungary. It was here that I started studying Neuropathology. I remain in this town until August 1956 when I returned to Budapest.

Q. Your wife's name is LIVIA REV KURY is that correct?

A. Yes.

Q. She is also a graduate of the Medical University of Budapest. Is that correct?

A. Yes.

Q. In what year did she graduate from the Medical University?

A. In 1951.

Q. I will now show you two photographs and ask if you can identify them? (Subject shown two photographs).

A. The man is KALMAN BERENYI, although he is a little [fol. 245] stouter than when I last saw him, and the woman is his wife, MAGDALENA—her maiden name was RETSAGI.

Q. Did you know that these two people were in the United States?

A. No, I am surprised that he is here.

Q. Why do you say that?

A. Because I knew that he was a Communist Party member. I also know that she was a Party member.

Q. On what do you base your knowledge that these two people were Communist Party members?

A. In 1948 student groups were formed in the university. These groups were formed at the University at the request of the officials of the Medical University. The official purpose of these groups was to have the students study medical subjects together; however, the unofficial purpose was to influence and educate the students politically and to find out who was who in the groups. The Communist Party took power in Hungary in 1948 and they did not know what the political thinking of the people was, and they formed these groups in the University, each group had a political leader who was a Party member. These political leaders explained to the groups what was happening in the Communist world, and they attempted to influence and guide the thinking of the groups. These groups were called TANULOKOR. I was a member of Group #4. The political leader of my group was KALMAN BERENYI.

Q. Was KALMAN BERENYI a student at the University at that time?

A. Yes, he was a member of my class.

Q. Then the political leaders were fellow students, is that correct?

A. Yes.

Q. How were these group political leaders selected?

A. I don't know. The students did not elect them. They were picked by the Communist Party leaders.

Q. You say that each group in the University had a political leader?

A. Yes.

Q. How many such groups would you say were in the University?

A. I cannot estimate how many groups there were, but [fol. 246] each class was broken down into groups of about 20.

Q. How often did these groups meet?

A. Every day, except Saturday and Sunday.

Q. Would the political leader address the group every day?

A. Yes.

Q. And to your knowledge were all these political group leaders members of the Communist Party?

A. Yes.

Q. Did KALMAN BERENYI, as the political leader of your group, wear the Communist Party emblem?

A. I don't remember, but I do know he was a Party member. Each member of the group had to give his background. BERENYI, as political leader, was the first to tell about himself, and I recall his telling the group that he joined the Communist Party in 1945.

Q. Was attendance at these group meetings compulsory?

A. When the groups started out attendance was not compulsory but as the groups became more and more political it was compulsory to attend.

Q. Were you asked as a member of the group to join the Communist Party?

A. No.

Q. Were many of the group members of the Communist Party?

A. In my group, of which BERENYI was the leader, there were about six. I remained in this group only about three weeks. Officially I requested and was permitted to join another group whose medical leader was an Associate Professor of Pathology, the field in which I was interested. Unofficially I did not want to remain in this group because there were too many Party members.

Q. How long did these groups continue at the University?

A. About one and a half years. It was found that the examinations of the students became poorer and poorer because too much time was being spent on political speeches. The University then dropped the groups and introduced the teaching of Marxism and Linenism as part of the curricula.

[fol. 247] Q. To your knowledge was BERENYI a political group leader during the entire existence of the groups?

A. I don't know. I dropped out of his group after about three weeks.

Q. Did you know BERENYI personally?

A. No, I was afraid to make the personal acquaintance of such a person.

Q. Did you know anything about BERENYI's activities at the University after these groups were discontinued?

A. After these groups were discontinued I know that he held some office in the Party.

Q. Were there Communist Party groups in the University after the TANULOKOR was discontinued?

A. There was always a Party group at the University.

Q. And to your knowledge was BERENYI a member of this University Communist Party group?

A. Yes.

Q. To your knowledge was KALMAN BERENYI a member of the Hungarian Medical Corps?

A. Yes, I know that he joined the Army before his graduation. I saw BERENYI in the uniform of the Army Medical College before his graduation.

Q. What year did BERENYI graduate from the University?

A. In 1952.

Q. From what you state BERENYI was a member of the Army before 1952?

A. Yes.

Q. What rank did BERENYI hold in the Army?

A. He was a First Lieutenant and he later became a Captain.

Q. Do you know how long he was a member of the Hungarian Medical Corps?

A. I don't know.

Q. Did you have any knowledge as to his Communist Party membership after your graduation from the University?

A. I don't know anything about him after his graduation, except that I saw him in uniform.

Q. What can you tell me about MAGDALENA BERENYI?

A. I don't know as much about her Party activities. A [fol. 248] friend of mine who was a Party member and who later became a medical officer in the army, told me that MAGDALENA was a Party member. He said that she was an opportunist; that because of her medium-rich family background she would have many more opportunities as a member of the Communist Party. This was the opinion of my friend.

Q. Did you of your own personal knowledge know that she was a Communist Party member?

A. I never heard her state that she was a Party member, but others, in addition to my Party member friend, told me that she was a Party member.

Q. Was MAGDALENA BERENYI a member of your class at the Medical University?

A. Yes.

Q. Was she one of the political leaders of these groups?

A. No.

Q. Was she a member of your group?

A. No.

Q. To your knowledge was she a member of the University Communist Party group?

A. Yes, she was.

Q. Did she hold any office in the group at the University?

A. I don't know—I don't believe she did.

Q. To your knowledge was she an active member of the University Communist Party group?

A. She was not active in the class, but outside I don't know. She did not try to influence anybody at the University.

Q. Was MAGDALENA BERENYI also a member of the Hungarian Medical Corps?

A. Yes.

Q. Do you know when she joined the Hungarian Medical Corps?

A. Probably after graduation. I did not see her in uniform while she was a student.

Q. Do you know what rank she held in the Army?

A. When I saw her I think she as a First Lieutenant. This was in 1954 or 1955. She might have become a captain, but I don't know.

Q. Do you know of any fellow students of yours at the [fol. 249] Medical University who are now in the United States, and who might be able to identify either or both of the SUBJECTS as Communist Party members?

A. I don't know any of my own fellow graduates who graduated in 1952 who are in the United States.

Q. Are there any Medical University graduates in the United States who you think might know these two SUBJECTS?

A. There is one person JANOS KEPES, who is now attached to the Mayo Clinic in Rochester, Minnesota, and he would know these two people. However, he, himself, was a member of the Communist Party and I don't think he would cooperate.

Q. In your opinion is KALMAN and/or MAGDALENA BERENYI a danger to the security of the United States?

A. I don't know. In case of war with Russia, I don't know how they would behave.

Q. Dr. Kury, would you be willing, if necessary, to appear as a witness in behalf of the United States Government in any proceedings, if requested to do so, and identify Kalman and Magdalena Berenyi as having been members of the Communist Party of Hungary?

A. If I had no close relatives in Hungary I would be willing to testify as to my knowledge of their Communist Party membership. However, my mother is in Hungary and if the Berenyi's return to Hungary I fear that reprisals might be taken against my family. For that reason I would be reluctant to appear as a witness.

Q. Have you understood all the questions?

A. Yes.

Q. Is there anything you would like to add to this statement?

A. I am not sure about this, and I cannot testify to it, but I seem to recall that Kalman Berenyi had a red star on the sleeve of his uniform which would indicate that he was a political officer in the army. This means that his [fol. 250] duties were to instruct army members in Communist policies and beliefs. I am not sure about this.

Q. After reading the foregoing statement consisting of Pages 1-6 inc., will you kindly sign it?

A. Yes.

.....

Witness

Subscribed and Sworn to Before me at Boston, Massachusetts on April 14, 1959.

.....

T. R. Cass, Investigator

[fol. 251]

GOVERNMENT'S EXHIBIT 1-G

RECORD OF SWORN STATEMENT

Office: Chicago, Illinois File No: A10 927 995
A10 927 996

Statement by: Pal Halasz

In the case of: Kalman Berenyi and Magdalena Berenyi.

At: Room 938A, New Post Office Building, Chicago, Illinois. Date: July 9, 1959.

Before: (Title) Investigator Jay T. Kamphuis

In the English language. Interpreter none used.

Q. I am an Officer of the United States Immigration and Naturalization Service, and desire to question you under oath regarding certain matters of interest to this Service.

Any statements which you make must be of your own free will and may be used as evidence in any deportation or other proceedings. Are you willing to make such a statement under oath?

A. Yes.

Q. Do you swear that all the statements you are about to make will be the truth, the whole truth, and nothing but the truth, so help you God.

A. I do.

Q. What is your true correct name?

A. Pal Halasz.

Q. Where do you reside?

A. 5643 North Glenwood, Chicago, Illinois.

Q. Are you a permanent resident of the United States?

A. Yes, I have my green card, No. A10 983 820.

Q. Mr. Halasz, have you ever been a member of the M. D. P. or the Magyar Komunista Partja?

A. Yes.

Q. Where and between what dates were you a member of this organization?

A. I was a member from 1948 to 1956, in Gyongyos, Hungary, and Budapest, Hungary. Also, while a member of the Hungarian Army between 1951 and 1956, when I left.

[fol. 252] Q. I will now present a photograph of a woman to you. I have placed my initials, date, and file number on the back of this photograph. I will ask you if you know this person.

A. Yes, I know that woman. Her name is Mrs. Magdalena Berenyi. She is a physician.

Q. How do you happen to know her?

A. I have known her since 1954 in Budapest, while we were both in the Hungarian Army medical corps.

Q. Was this woman ever a member of the M. D. P. or similar organization?

A. As far as I know, she was not.

Q. Was she ever a member of any other organization to your knowledge?

A. She must have been a member of Disz, because as students everyone had to be a member.

Q. Was she still in medical school when you met her?

A. Yes. The name of that school was Budapest Medical University. When I started medical school it was called Pazmany-Peter Medical School. Pazmany Peter was a Jesuit priest, but the Communists took it over, and changed the name about 1952 or 1953.

Q. Was she a member of the Army while she was going to medical school?

A. Yes.

Q. What was her rank?

A. At school there was no rank, but later on when I met her outside she was a captain.

Q. At the time you left Hungary was she still in the Army?

A. I don't know about the last three or four months, but before that she was.

Q. What were her duties in the Army?

A. As a doctor specializing in internal medicine.

Q. Could she hold this position without being a Communist party member?

A. Yes, she could because she was a very good student.

Q. Will you initial this photo to indicate that this photograph of Mrs. Berenyi has been discussed?

A. Yes.

Q. I will now show you a photograph of a man, on the back of which I have placed my initials, date, and file number. Will you examine this photograph and tell me if you [fol. 253] can identify the photo?

A. Yes, that is Dr. Kalman Berenyi. I have placed my initials and date on the photo.

Q. How did you happen to know him?

A. Actually he was in the same Army organization that I was.

Q. Between what dates were you associated together?

A. From 1951 until I left Hungary. In the last two or three years I only met him a couple of times.

Q. Was he in medical school with you?

A. Yes, but in a higher class.

Q. When you first time you met him in the Army?

A. About 1951. Actually, we were both military men going to school.

Q. Was this woman ever a member of the Magyar Komunista Partja as far you know?

A. Yes, as far as I know, he was a member.

Q. For what reason do you state this?

A. I was a member of the Communist Party, and I think he was a member of the same unit with me.

Q. When did you first know him to be a Communist?

A. When I first saw him in a Communist Party meeting.

Q. When was this approximately?

A. Sometime in 1951.

Q. And how long, to your knowledge, did his membership continue?

A. At least until 1953 or 1954.

Q. Did you ever see his Party book?

A. I can't recall.

Q. Did you ever see him pay dues?

A. I can't recall.

Q. Did you ever lead a discussion group of the Party

A. No, I don't think so.

Q. Did he ever lead a discussion group of the Party when he was present?

A. No.

Q. Did you ever attend a meeting of the Party at which only Communist Party members were allowed?

A. Yes.

Q. Did Dr. Berenyi also attend some of these meetings restricted only to Party members?

A. Yes.

Q. How many of these meetings would you estimate both of you attended?

A. Oh, almost every month, between 1951 and 1953 or [fol. 254] 1954. To come to think of it, I believe he graduated about 1952 from medical school.

Q. In other words, while you were both going to medical school, both you and he attended Communist Party functions at which only Communist Party members could be present?

A. Yes.

Q. After 1952 did you and he ever attend any Communist Party meetings together?

A. No, because we were stationed in different places. I was at Jiszberany and he was stationed in Budapest, as far as I know.

Q. Do you know when he joined the Army?

A. He was in the Army when I got in.

Q. Up to the time of your graduation from medical school did you hold any military rank or authority?

A. Military authority only. No rank, only to lead the men from the camp to the street car or to be responsible for good behavior.

Q. Was this true of Mr. Berenyi also?

A. He had no rank or authority.

Q. At the time of your graduation in 1955 and joining the Army, what was his rank?

A. I think it was captain.

Q. While you and he attended these Party meetings restricted only to Party members, where were these meetings held?

A. In the dormitory, usually in the room where we used to study.

Q. How many people would be present at these meetings?

A. Usually between twenty to thirty.

Q. Always the same persons?

A. Yes.

Q. Were you and he actually at Communist Party functions where the participants were actually Communist Party members, with no non-Communists present?

A. Yes, sir, on many occasions.

Q. How was it determined whether a person was a Party member when he came to the meeting?

A. By his Party identification.

[fol. 255] Q. Did Mr. Berenyi ever lead a restricted Party member meeting?

A. No.

Q. Are you and Mr. and Mrs. Berenyi on good terms?

A. Oh, yes, we never had any trouble with one another.

Q. How much were the dues at the time the dues stamps were put in your book and in Mr. Berenyi's book?

A. Two forints a month.

Q. Do you remember the address of this dormitory where meetings were held?

A. The name of the dormitory was Homved Collegium, located first Ulloi 80, in the 8th or 9th District of Budapest, and then we were moved in my second year to the 11th District, the number was 16 Nagyboldog Asszomy utca, Budapest.

Q. How were you notified of meetings of the Party?

A. They put up a notice on the bulletin board.

Q. At the first restricted Communist Party meeting you attended, was Mr. Berenyi there?

A. Not the first meeting, because he was in the hospital because of a bullet wound on his left wrist. A sergeant's gun went off while showing it, and wounded Mr. Berenyi. He was in the hospital for two or three months. He was in the hospital when I joined the Army, but after he became well, he was there.

Q. Was Communist Party literature passed out at those meetings?

A. Not necessarily, because it passed out in school and everyone had to study it and take examinations whether they were Party members or not.

Q. Did you ever discuss Party principles with him, either in a meeting, or personally?

A. No, but I could tell he didn't like the regime. He mentioned certain things I can't recall now, but which were against the Party and the regime, which would come out and for which we could get ten years to life.

Q. Do you believe or do you have any basis for believing whether Mr. or Mrs. Berenyi were ever genuine Communist Party members from an ideological standpoint? [fol. 256] A. I believe Mr. Berenyi was only a Communist Party member on paper. He was not a Communist as far as anything in his mind was concerned.

Q. Do you remember the names of any of the officers of your unit of the Party?

A. Pal Sandor was the secretary.

Q. Did your unit have a name or number?

A. No.

Q. At these closed Party meetings, restricted to members, did you have speakers who were identified as Party leaders?

A. Yes, many times. Either from another unit or the Army or in the University who was responsible for lectures to the students. The speakers were introduced as Party leaders.

Q. Was Mr. Berenyi present at some of these meetings?

A. Yes.

Q. Did Mr. Berenyi or Mrs. Berenyi take any part in the October revolution?

A. I believe so, because the hospital where they were stationed, his wife in the hospital and he and his unit in Budapest has to be beside the Freedom Fighters against the Russians. I don't about them personally, but all the military units in Budapest started to fight the Russians the first day.

Q. Have either of these people even been arrested for political or criminal reasons, as far as you know?

A. As far as I know, no.

Q. Have either of these people ever had any dangerous or contagious disease or physical disability?

A. No, except at one time Mr. Berenyi suffered from hepatitis. I know this, because he was on a diet. Neither had any physical disability.

Q. If necessary, would you be willing to repeat this testimony at an open hearing or in court, if such became necessary?

A. Yes, although I do have relatives still in Hungary.

Q. Is there anything you wish to add to this statement?

A. Yes. Mr. Berenyi was a very good student at the uni- [fol. 257] versity, one of the best in his class. In his mind he was not a Communist. He was considered a very good doctor.

Q. Do you know of any reason why he would deny Communist Party membership?

A. Maybe he is afraid if he told the truth he could not stay in the United States.

Q. Did he ever tell you when he became a member of the Party?

A. No, he never did.

Q. Do you think his wife was a Communist, ideologically?

A. No, I am sure she was not.

Q. Did you and he ever attend Party meetings while in the Army?

A. No.

Q. Will you read over this statement, and if it is correct sign it?

A. Yes.

I do solemnly swear that I have read over this statement and that it is all true and correct.

.....

Subscribed and sworn to before me at Chicago, Illinois July 9, 1959.

JAY T. KAMPHUIS
Jay T. Kamphuis
Investigator.

Witnessed:

[fol. 258] PETITIONER'S EXHIBIT B

TRANSLATION OF KALMAN J. BERENYI'S PERSONAL DOCUMENT:

Quotation from page 18:

"Transferred to reserve status, on his own request as of November 19, 1956.

Budapest, November 19, 1956.

Signature:

Dr. Kiraly Janos Captain of Medical Corp. Deputy Commander of Number 1. Army Hospital

Seal reads; No. 1. Army Hospital Commandership.

[fol. 259] UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the Matter of:
Petition for Naturalization by
KALMAN J. BERENYI,
#1500-P-351469

OPINION—March 29, 1965

JULIAN, D. J.

In accordance with the requirements of 8 U. S. C. §1447, a final hearing was had before this Court upon the petition for naturalization of Kalman J. Berenyi[1] filed January 30, 1962, under Section 316(a) of the Immigration and Nationality Act (8 U. S. C. § 1427). A preliminary examination was conducted by a designated naturalization examiner pursuant to the provisions of 8 U. S. C. § 1446.[2]

[fol. 260] In his report of the preliminary examination dated October 12, 1964, and submitted to this Court, the examiner, after summarizing the evidence before him and stating his findings of fact and conclusions of law, recommended that the petition for naturalization be denied on the grounds that the petitioner's membership in the Communist Party of Hungary and his advocacy of the doctrines of Communism have rendered him ineligible for naturalization under 8 U. S. C. § 1424,[3] and that during the period

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[1] This petition was heard together with Petition for Naturalization No. 351468 of Magdalena Berenyi.

[2] 8 U. S. C. § 1446 reads as follows:

• • •

"(b) The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. For such purposes any such employee so designated is authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to administer oaths, including the oath of the petitioner for naturalization and the oaths of petitioner's witnesses to the petition for naturalization . . ."

[3] 8 U. S. C. § 1424 provides in pertinent part as follows:

"(a) . . . no person shall hereafter [after June 27, 1952] be naturalized as a citizen of the United States—

• • •

"(2) who is a member of or affiliated with . . . (D) the Communist or other totalitarian party . . . of any foreign

for which the petitioner is required to establish good moral character he testified falsely for the purpose of facilitating his naturalization, thereby obtaining a benefit under the Immigration and Nationality Act, and thus becoming in- [fol. 261] eligible for naturalization by virtue of the provisions of 8 U. S. C. §§ 1101 and 1427.[4]

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state, or of any political or geographical subdivision of any foreign state; . . .

"(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism . . . ;

* * *

"(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years immediately preceding the filing of the petition for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, notwithstanding that at the time the petition is filed he may not be included within such classes."

[4] The pertinent portions of 8 U. S. C. § 1101 provide:

* * *

(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

"(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;"

8 U. S. C. § 1427 provides:

"(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition

[fol. 262] The record of the preliminary examination was received in evidence (Exhs. 1A-1H). The petitioner by his counsel expressly consented to its admission.[5]

Pursuant to 8 U. S. C. § 1447(b), the Court, upon demand of the petitioner, required the examination of the petitioner and the witness under oath before the Court and in the presence of the Court.

The Court did not consider as evidence the Summary of the preliminary examination, the findings of fact, conclusions of law, and recommendation contained in the examiner's report.

Findings of Fact

The petitioner filed his petition for naturalization in the office of the clerk of this Court on January 30, 1962.

He is a Hungarian national and was born in Budapest, Hungary, August 7, 1928. He entered the United States on December 4, 1956, having been admitted for permanent residence. He presently resides in Massachusetts with his wife, Magdalena, also a Hungarian national, whom he married in Budapest on June 7, 1952.

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up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

* * *

"(e) In determining whether the petitioner has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the court shall not be limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period."

[5] U. S. C. § 1446(b), last sentence, reads: "The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 1421 of this title." This sentence was added in 1950 by section 28(a) of Public Law 831, Title 1, Internal Security Act of 1950.

Petitioner became a member of the Communist party in Hungary in 1945, the same year that Russian troops occupied that country. By September of 1948 the Communists had gained complete control over Hungary.

Petitioner entered the medical school of the University of Budapest in 1946. He entered the Hungarian Army in 1949, which was then under Communist control. While in the military service he continued his medical studies at the University until his graduation in 1952. He was an out-[fol. 263] standing student. Upon graduation he was made a medical officer and served as a physician in the Hungarian Army until 1956, attaining the rank of captain.

The credible evidence establishes that the petitioner remained a member of the Communist party for an indefinite number of years. The evidence, however, is too meager to warrant a finding that the petitioner continued to be a member of the Communist party within the period of ten years immediately preceding January 30, 1962, the date on which he filed his petition for naturalization. He attended closed meetings of the Communist party. He was in charge of instruction in Communist ideology at student study group meetings for an undetermined period of time.

The Hungarian uprising against Russian domination came in November, 1956, but was swiftly crushed by the Russian armed forces. The petitioner did not participate in the revolt. In the resulting confusion he and his wife, as well as others, fled from Hungary into Austria, and were later permitted to come to the United States.

In his "Application to File Petition for Naturalization" (Exh. 1D), subscribed and sworn to by the petitioner on January 30, 1962, before a naturalization examiner, the petitioner answered "No" to this question: "Have you ever, in the United States or in any other place, (a) been a member of, or in any other way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person?" At the time he answered this question in the negative the

petitioner knew that the answer was false, and that the true answer should have been "Yes."

On February 2, 1962, in Boston, Massachusetts, the petitioner stated under oath to an officer of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States, that he, the petitioner, had never [fol. 264] been a member of the Communist Party either in the United States or in any other country (Exh. 1D). At the time the petitioner made this statement he knew that it was false and that in fact he had been a member of the Communist party in Hungary.

On May 22, 1962, testifying under oath before an officer of the Immigration and Naturalization Service concerning his petition for naturalization, the petitioner stated that he had never been a member of the Communist party. At the time he so testified the petitioner knew that his testimony was false and that in fact he had been a member of the Communist party.

In each of these three instances the petitioner gave false testimony for the purpose of facilitating his naturalization and of obtaining the benefits of United States citizenship.

The Court finds that the petitioner is not a person of good moral character within the meaning of the Immigration and Nationality Act.

Conclusions of Law

No person may be naturalized unless during the period of five years immediately preceding the date of filing his petition for naturalization he has been and still is a person of good moral character. 8 U. S. C. § 1427(a).

A person who during the period for which good moral character is required to be established has given false testimony for the purpose of obtaining any benefit under the Immigration and Nationality Act cannot be regarded as,

or found to be, a person of good moral character within the meaning of the Act. 8 U. S. C. § 1101(f)(6).

The petitioner has the burden of showing that he meets the statutory qualifications for naturalization, and in determining whether he has sustained the burden of establishing good moral character and the other qualifications, [fol. 265] the Court is not limited to the petitioner's conduct during the five years preceding the filing of the petition, but may take into consideration as a basis for such determination the petitioner's conduct and acts at any time prior to that period. 8 U. S. C. § 1427(e). *Sittler* v. *United States*, 1963, 2 Cir. 316 F. 2d 312, 313-314, cert. denied, 376 U. S. 932. Therefore, for the purpose of determining whether petitioner gave false testimony concerning his membership in the Communist party the Court may take the fact of such membership into consideration even though he may not have been a member within the five- or ten-year period immediately preceding the filing of the petition.

On the facts found by the Court the petitioner has failed to establish that during the period of five years immediately preceding the date of the filing of his petition he has been and still is a person of good moral character within the meaning of the Immigration and Nationality Act.

The petition is therefore denied.

.....

United States District Judge

[fol. 266]

IN THE UNITED STATES DISTRICT COURT

ORDER OF COURT DENYING PETITIONS FOR NATURALIZATION —April 12, 1965

(See opposite) ☞

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Order of Judge Julian

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Order No. 1834A

ORIGINAL.

UNITED STATES OF AMERICA
DISTRICT OF MASSACHUSETTS } ss:

In the DISTRICT Court
of THE UNITED STATES
at BOSTON, MASSACHUSETTS

Upon consideration of the petitions for naturalization recommended to be denied, listed on List No. 1834A sheet(s) 1 to dated November 30, 19 64, presented in open Court this 30th day of November, A.D., 19 64, IT IS HEREBY ORDERED that each of the said petitions, except those petitions listed below, be, and hereby is, denied.

IT IS FURTHER ORDERED that the recommendation of the designated employee is disapproved as to the petitions listed below, and each of said petitioners so listed having appeared in person in open Court this 12th day of April, 19 65, and each having taken the oath of allegiance required by the naturalization laws and regulations, IT IS HEREBY ORDERED that each of them be, and hereby is, admitted to become a citizen of the United States of America.

IT IS FURTHER ORDERED that prayers for change of name listed below be and hereby are granted except as to petition(s) No.

	Petition No.	Name of Petitioner	Change of Name
1	351463	Magdalena Berenyi	
2	-		
3	-		
4	-		
5	-		
6	-		
7	-		
8	-		
9	-		
10	-		

2901 234

IT IS FURTHER ORDERED that petitions listed below be continued for the reasons stated.

	Petition No.	Name of Petitioner	Cause of Continuance
1	-		
2	-		
3	-		
4	-		
5	-		
6	-		
7	-		
8	-		
9	-		
10	-		

By the Court, this 12th day of April, 19 65

Julian

Form N-464-A
(Rev. 5-1-64)

U.S. GOVERNMENT PRINTING OFFICE 16—87176-6

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UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

ORIGINAL

List No. 1834A

To the Honorable the DISTRICT Court of THE UNITED STATES
sitting at BOSTON, MASSACHUSETTS

An employee of the Immigration and Naturalization Service, duly designated under the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization to the above-named Court and to make findings and recommendations thereon, has personally examined under oath at a preliminary examination the following two (2) petitioners for naturalization and their required witnesses, has found for the reasons stated below, that such petitions should not be granted, and therefore recommends that such petitions be denied.

No.	Petition No.	Name of Petitioner	Reason for Denial
1.	351468	Magdalena Berenyi	Failed to establish good moral character during the period required by law.
2.	351469	Kalman John Berenyi	Failed to establish good moral character during the period required by law and petitioner is barred from naturalization under the provisions of Section 313 of the Immigration and Nationality Act.
3.	-		
4.	-		
5.	-		
6.	-		
7.	-		
8.	-		
9.	-		
10.	-		
11.	-		
12.	-		
13.	-		
14.	-		
15.	-		
16.	-		
17.	-		
18.	-		

2901 235

Respectfully submitted,

Date November 30, 19 64

Joseph B. Sullivan
(Signature of officer in attendance at final hearing)

Form N-424
(Rev. 5-1-64)

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PAGE

[fol. 268]

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

NOTICE OF APPEAL—April 17, 1965

Sirs:

Please Take Notice, that the above-named petitioner for naturalization hereby appeals to the United States Court of Appeals for the First Circuit at Boston, Massachusetts, from the order dated and entered April 12th, 1965, made by the Honorable Anthony Julian, a Judge of the United States District Court for the District of Massachusetts, denying naturalization to the said petitioner.

Please Take Further Notice, that this appeal is from each and every part of said order as well as from the whole thereof.

Dated: New York, New York, April 17th, 1965.

Yours, etc.,

Spar and Burroughs, Attorneys for Petitioner, Office & P. O. Address: 160 Broadway, New York 38, New York, By: Charles Spar, Of Counsel.

[fol. 269]

To:

Hon. Joseph B. Sullivan, General Attorney, Immigration & Naturalization Service, 150 Tremont Street, Boston, Massachusetts.

Clerk, United States District Court, District of Massachusetts, Post Office Building, Boston, Massachusetts.

[fol. 271]

RECORD APPENDIX

Government's Exhibit 1-C

United States Department of Justice

Immigration and Naturalization Service
New York 23, New York

RECORD OF SWORN STATEMENT

Re: Kalman Berenyi File: A10 927 995

Present

Respondent: Kalman Berenyi
Investigator: Robert L. Lyness
Stenographer: Ethel H. Stein

Place: 70 Columbus Ave
New York, New York

Language: Hungarian
(and English)

Date: September 24, 1957

Interpreter: USINS
Maria Cook

Investigator Lyness to respondent, through official interpreter:

You are advised that I am an Investigator of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality Laws of the United States. I desire to take a statement from you under oath concerning a matter of interest

to the Government. You are advised that any statement you make must be voluntary and that it may be used by the Government as evidence in any proceedings that may be instituted against you or any other person. Do you understand?

A. Yes.

Q. Are you willing to make a voluntary statement under oath at this time under these conditions?

A. Yes.

[fol. 272] Q. Will you please stand and raise your right hand? (Respondent complies). Do you solemnly swear that all the statements you are about to make will be the truth, the whole truth and nothing but the truth, so help you God?

A. Yes.

Q. You are also advised that if you knowingly and willfully give false testimony concerning a material fact you may be subject to prosecution for perjury, the penalty for which is a fine of not more than $2000 or imprisonment for not more than five years, or both. Do you understand?

A. Yes.

Q. What is your true and complete name?

A. KALMAN BERENYI.

Q. Have you ever used any other name?

A. No.

Q. What is your date and place of birth?

A. Budapest, 1928 August 7th.

Q. Of what country are you a citizen?

A. Hungary.

Q. Are you married?

A. Yes.

Q. What is you wife's name, nationality and present address?

A. My wife's name is Mrs. BERENYI. Her maiden name was MAGDALENA RETSAGI. She is residing with me at Coney Island Hospital.

Q. When and where were you married?

A. In Budapest, 1952, June 7th.

Q. Do you have any children?

A. No.

Q. Were you ever previously married?

A. No.

Q. When and how did you enter the United States?

A. I came here by plane in 1956, December 4th. I came [fol. 273] from Hungary exactly 1956 November 19th. I crossed the border November 20th.

Q. How were you admitted to the United States?

A. I was in the American Embassy and I got permission to come here and I got my green card.

(INVESTIGATOR'S NOTE: Subject presents I-151 form showing facts of entry as stated and that he was admitted as a Y-2A alien for permanent residence. Card returned).

Q. What is your present employment in the United States?

A. I am an intern in the Coney Island Hospital, City Hospital.

Q. Do you also reside there?

A. Yes, I have my apartment there.

Q. What is your social security number?

A. I don't know. I guess we don't have it yet. Two months ago we got a paper with some numbers on it but I don't think it was the social security. I got my salary check and they handed me some papers which I thought at first were the social security papers but now I don't think so.

Q. Do you recall making application for a social security card?

A. No I don't. I just filled out the application for my job when I went to this job in December, 20th but I didn't ask about social security because I didn't know what this was at that time.

Q. When were you discharged from Camp Kilmer?

A. From Camp Kilmer I was discharged the next day, after I came here, Dec. 5th.

Q. What agency sponsored your coming to the United States?

A. NCWC (National Catholic Welfare Council).

Q. Where were you destined when you left Camp Kilmer?

[fol. 274] A. I went to my father-in-law's apartment for two weeks. Then I got my job. He is a citizen and he has an apartment at 1549 Townsend Avenue, Bronx. I was there until December 20th and meanwhile I got internship through the Foreign Medical Service. They have an office in Union Square and they referred me to the hospital and since then I am working over there.

Q. Where was your place of residence in Hungary?

A. Budapest VIII, Nepszinhaz Street No. 40.

Q. How long did you reside at this address?

A. I was at this address when I got married in 1952, June 7th. I left this house exactly November 19th when I left Budapest by train.

Q. What was your previous place of residence in Hungary?

A. My previous place was in the XI District, Nagyboldogasszony Street, No. 27, Budapest.

Q. How long did you reside at this address?

A. This address was the army address. You know that because I told in Vienna that I was in the army. They drafted me into the army in 1949 and I was in this place since then. Before this place we got military barracks in the Kossuth Military Academy. I was in this address from 1949, January 3rd, until 1950, September, and we have to move from there and we got to the address I just gave you.

Q. Where were you employed in Hungary?

A. I was a third-year student when they drafted me to the army. I had my student years also in the army. I attended the Budapest Medical School while I was a soldier. They called us military college students. The university was actually the regular University of Sciences because the army itself had no special medical school. I graduated in 1952, August 20th, and they made me doctor officer. I was lieutenant. I became lieutenant and I had my job diffierent [fol. 275] places in the country in different groups in the

army, like a doctor. I was nine places, maybe four or nine places.

Q. Were you attached to the medical division of the Hungarian Army?

A. I was captain. I gave in Vienna my military identification card. They have it because when I came here I was released from the army but only two days before I left Budapest. I was released at my own request. I asked for my release many times.

Q. As a captain in the Hungarian Army did you perform any other duties than those of a doctor?

A. I was only a doctor.

Q. You were not in command of any attachments or any personnel?

A. I did the same as in this army. I examined the soldiers when they were drafted into the army and I treated them if they had any sickness or diseases.

Q. How long were you a captain in the Hungarian Army?

A. I was named captain in 1955, December, but until that time I was lieutenant for four years.

Q. Where did you serve as an officer in the army?

A. I was a physician for one year at the Air Defense Division and there they gave exercises for future officers.

Q. Who conducted these training courses at these various camps?

A. Various officers. I was not connected.

Q. Were they usually members of the Communist Party?

A. Some of them—most of them were.

Q. Did you ever attend any of the Communist indoctrination courses?

A. We had to, although I personally was not a member of the Communist Party, but I had to attend so-called seminars in Marxism and Leninism.

Q. How often did you attend these seminars?

[fol. 276] A. One each week. During my four years in the army I had to do this.

Q. Was it also necessary to attend these seminars although not a member of the Communist Party after 1952?

A. Yes.

Q. In other words, you attended weekly seminars from 1949 up until 1956?

A. Yes, I had to.

Q. And yet you stated that it was not necessary to be a member of the Communist Party to attend these seminars.

A. For everyone who was not member of the party they had to attend these courses. It was the same in the civilian life.

Q. What is the extent of your education?

A. I had four years of elementary school. I had eight years of high school in Budapest and I had five years of university medical school and one year of internship in Budapest; altogether eighteen years.

Q. I believe you stated that you left your place of residence in Budapest on November 19 and arrived in Austria on November 20, did you experience any difficulty in escaping?

A. (I arrived early in the morning of the 21st). I think that while in a town near the border because there the Russian soldiers did not allow to leave the railroad station until morning because it was a curfew at that time and I left the railroad in the morning and I had a friend of mine who showed me a little village where I could pass the border. I didn't have too much difficult to cross the border.

Q. Did you participate in any way in the revolution in Hungary?

A. Not directly, only indirectly because the army hospital where I worked was in connection with a freedom fighters group in the KILIN Barracks and they sent us wounded freedom fights to treat.

[fol. 277] Q. Why did you leave Hungary?

A. I had different reasons. First of all I always wanted to get rid of my army service and I was actually released from this service only one day and this was not my official because only my commanding officer signed my release. I was also afraid because the Kadar Government collected signatures of army personnel to the effect that we approved

of the Russian intervention and that we were against the so-called counter revolution because the Kadar regime called freedom fighters counter revolutionaries. I did not want to sign a declaration and this was one reason why I left the country. My other reason was that the parents of my wife lived in the United States and I always planned to rejoin them and I always had the wish to live in a free country at last.

Q. Are you now or were you ever a member of the Communist Party of any country?

A. I was not.

Q. Were you stationed at any military post at the same time with your wife?

A. For a while I was with her in the military barracks at Nagyboldogasszony Street and during the revolution I went over to the military hospital at the Robert Karoly Street where my wife worked. This was just opposite the military barracks where I was stationed until that time.

Q. Where did you first meet your wife?

A. When we were students at the university. It was in 1948. We were not engaged then. I just knew her.

Q. Did your wife also reach the rank of captain in the army?

A. Yes.

Q. You stated previously that it was compulsory for you to attend these seminars weekly and that you attended them from 1949 until 1956. Is that correct?

A. Yes.

[fol. 278] Q. Would you explain why your wife testified that it was not necessary to attend these seminars while in the army?

A. Maybe she meant that it was not a party meeting. These were training courses for everybody in Marxism and Leninism. My wife probably meant that the question was about attending party meetings and these were not party meetings. These were just training course which every soldier had to attend. There were party members and non-party members present. It was a part of the military train-

ing we received, the same as in other subjects, as for instance marksmanship.

Q. Were you a member of any organizations in Hungary?

A. I was only in one organization in the MEFESZ, an organization of students which was discontinued in 1950.

Q. Was it not necessary to be a member of DISZ while at the university?

A. No. At that time I was too old to be a member of DISZ. because generally this membership was necessary only until one reached the age of twenty, as far as I know. And I had no interest in becoming a member of DISZ.

Q. We have received information that you were a regular captin (sic) in the army and that you were a member of the Communist Party; that your wife was a militant activist and that she passed a high party course and that she was a Communist at the university also. Are any of these allegations true?

A. No. I was a military doctor, not a regular captain. I can prove in my diploma that I have here. I was not a member of the party. My wife was not member of the party. It is not true.

Q. Do you have any of your Hungarian identification papers?

A. No, my identification paper was taken from me in Vienna.

Q. Where was your wife's taken?

[fol. 279] A. I guess hers was taken in Camp Kilmer.

Q. Were you previously questioned by any other agency in the United States?

A. Yes, at Camp Kilmer and one man I guess was from this Service. In fact as far as I recall he was in the hospital and he asked a few questions about my previous addresses in Hungary and also in Vienna I was questioned.

Q. What is your opinion of Communism?

A. In Hungary the Communists made only promises, even in the time before 1948. All these promises never was kept because it was quite obvious that during the Communist regime the country became an Iron Curtain country. There was no freedom and it was heading to this ruin. Those are the reasons that I disapprove of Communism.

Q. Are there any individuals presently residing in the United States who knew either you or your wife in Hungary?

A. Yes, there are some present.

Q. Will you give the names and addresses of persons who knew you in Hungary?

A. Dr. MARGIT ZOLLER. She is living in the Coney Island Hospital now. Dr. TAMAS VEREBE. I don ;t (sic) know her address but I know he lives somewhere in New York.

Q. Do you have any relatives abroad?

A. Yes, my parents live in Hungary. My father's name is the same as mine. He lives at 49B Francia-Ut, Budapest XIV.

Q. Do you have any relatives presently residing in the United States?

A. No direct relatives, only the relatives of my wife.

Q. Have you understood all the questions?

A. Yes, I did.

Q. Is there anything you wish to add to this statement?

A. No.

I have had read to me in the Hungarian language the [fol. 280] foregoing statement, consisting of eight pages. I state that the answers made therein by me are true and correct, to the best of my knowledge and belief, and that this statement is a full, true and correct record of my interrogation on the date indicated by above-named officer of the Immigration and Naturalization Service. I have initialled each page of this statement.

Signature: DR. KALMAN BERENYI

Subscribed and sworn to before me
at New York, New York, on
Oct, 8, 1957.

U. S. Immigration and Naturalization Service
(s) WILLIAM W. CHASE, Investigator

Witness: (s) THOMAS J. KILBRIDE
Investigator

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE
NEW YORK 23, NEW YORK

RECORD OF SWORN STATEMENT

In re: BERENYI, Kalman File No. A-10 927 995

PRESENT

Respondent—Kalman Berenyi
Attorney for Respondent—Charles Spar
Investigators—Edw. L. Morel, Jr.
Samuel H. Zutty
Stenographer—B. E. Butler

Place: 70 Columbus Ave.
9th Floor

Date: January 13, 1959 Language: English

Investigator Morel to Respondent:

Q. You are advised that I am an Investigator of the United States Immigration and Naturalization Service, [fol. 281] authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take a statement from you, under oath, concerning a matter of interest to the Government. You are advised that any statement you make must be voluntary and may be used by the Government as evidence in any proceedings instituted against you or any other person. Do you understand?

A. Yes.

Q. Are you willing to make a voluntary statement before me at this time under these conditions?

By Attorney Spar:

A. I would state for him and bind him that he is willing to make a statement under oath concerning all pertinent

questions put to him with the understanding that he will reserve the right to object to any questions that are repititious, fishing, expeditious or have already been answered in the previous statement made by Dr. Berenyi, under oath on September 24, 1957 to another Investigator of this Service.

Q. Attorney Spar, I wish to advise you that this is still an investigative matter and as such, you have a right to represent your client but you have no right to interpose any objections at this stage of the proceeding. Any objections you may wish to interpose after this investigative matter, may be sustained at the proper time and place but this is not the proper time and place.

By Attorney Spar:

A. Mr. Morel, for your information, I think the record is very clear that I made no objection. I merely stated that there will be a limit by this arrangement in the answering of questions. You have stated in the prologue, that the statement by Dr. Berenyi must be a voluntary one. If his statement is voluntary and is to be without coersion (sic) then he has a right to refuse to answer all or some of your questions. He has merely stated through my lips his position in this matter that he will answer such questions as [fol. 282] are pertinent to your investigation, and they are not repititious. That does not mean it is an objection.

Q. Will you please stand and raise your right hand? (respondent complies) Do you solemnly swear that all the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

Q. You may be seated. You are also advised that if you knowingly and willfully give false testimony concerning a material fact, you may be prosecuted for perjury the penalty for which is a fine of not more than $2,000 or imprisonment for not more than five years or both. Do you understand?

A. Yes I do.

Q. What is your full, true and correct name?

A. Kalman Berenyi.

Q. Have you ever used or been known by any other name?

A. No.

Q. When and where were you born?

A. August 7, 1928 in Budapest, Hungary.

Q. Of what country are you a citizen?

A. I am a citizen of Hungary—I suppose so.

Q. Are you married?

A. Yes I am.

Q. When and where were you married?

By Attorney Spar:

A. Mr. Morel I will object to this question on the ground that Dr. Berenyi has given a full reply to this question in the Question and Answer Statement on September 24, 1957.

Investigator Morel to Counsel:

Q. Mr. Spar I wish to advise you that you are here purely an an observer, in representing your client in this investigative proceeding and you are not entitled to enter any objections. Do you understand?

[fol. 283] A. I do not understand that at all. I do not agree with you at all.

Q. Mr. Berenyi, do you refuse to answer the question as to when and where you were married?

(Objection is still interposed by Counsel)

(Investigator Morel excused himself and leaves the room.)

(After about ten or twelve minutes Investigator Morel returned with Investigator Zutty to proceed with the interrogation.)

Investigator Morel to Respondent:

Q. Are you the same Kalman Berenyi who appeared before Investigator Lyness in this office on September 24, 1957?

A. Yes.

Q. During what years were you a student at the University of Budapest?

A. Between 1946 and 1952.

Q. Was that period of time both as an under graduate and graduate student?

A. I do no know in this case what you mean by an under graduate student.

Q. During the period of time you were a student (you have just stated 1946 to 1952), was any of this time spent in the medical school?

A. I was all the time a student of the Medical School at the University of Budapest.

Q. Following graduation from the University, where did you go?

A. I stated this at this office last time I was questioned by Investigator Lyness the places where I worked starting with 1952 when I graduated from the University until I came to this country. Is it necessary to repeat them again?

[fol. 284] By Attorney Spar:

I advise you Dr. Berenyi that if you have already answered that question, you are not required to answer it again.

Q. Following your graduation from Medical School, did you immediately begin to practice or did you enter the army?

A. I stated before, I was in the army.

Q. When were you in the army?

A. Exactly, January 3, 1949 until I left Hungary I was in the army—November 18, 1956.

Q. Did you ever practice medicine in the Pazmanyi Peter Hospital in Budapest?

A. There is no such hospital in Budapest. The university where I studied is called Pazmanyi Peter.

Q. Did you ever practice medicine at Pazmanyi Peter University?

A. I was a medical student, I could not practice medicine at that time.

Q. Did you ever practice medicine at the County Hospital at Dorog?

A. No, never. I have never been in this town in my life.

Q. Did you ever practice medicine in Uzsoki Hospital in Budapest?

A. No, I was born there—I never practiced there.

Q. During your period as a medical student at the University of Budapest, was any part or parts of your class broken up into groups or sections?

A. What kind of groups do you mean. I remember while we were in the University, we had certain groups as you put it. It was in the last year that we were sent to Obstetrics or Surgery, similarly as it is here in the internship. There was a person who kept the attendance records—one of our students. I would not call him a leader.

[fol. 285] Q. Who designated this particular student to keep the attendance records?

A. Well, usually the institution where this particular group was sent.

Q. Were any of these leaders selected by the Communist Party?

A. Not that I know of.

Q. Were you ever a leader at any time in any one of these groups?

A. I do not recall that there had been.

Q. Approximately how many people would comprise this group?

A. As far as I recall, it varied between ten and twenty—something like that.

Q. During the period you were at the University, in your sworn testimony of September 24, 1957 you stated that you were a member of the Mefesz, an organization of students and that this organization was discontinued in 1950. Is that correct?

A. Yes.

Q. Were all of the students members of Mefesz?

A. All of them.

Q. Did you hold any position in MEFESZ?

A. Apart from that of a nominal member, no.

Q. Are you now or have you ever been a member of MAGYAR DOLGOZOK PARTJA?

A. As I stated before, I was not and I am still not a member.

Q. Did you at any time ever wear the Communist Party emblem in the lapel of your clothes or military uniform?

A. Never.

Q. In your statement of September 24, 1957 you stated it was imperative for you to attend training courses while you were in the army. Is that correct?

A. Yes, as an officer.

[fol. 286] Q. You also stated that you had to attend so-called seminars in Leninism and Marxism. Is that correct?

A. Yes.

Q. Was it necessary for all officers in the army to attend these seminars?

A. Yes.

Q. Would it be possible for a non-member of the Communist Party to attend the same seminar as the one attended by a member of the Communist Party?

A. Both of them should attend—yes everybody. I remember the exact statement—I said it is the same. It was the same routine as learning marksmanship.

Q. Were you ever connected in any manner with HONVED KOLLEGIUM?

A. Yes.

Q. What was your connection with HONVED KOLLEGIUM?

A. I was there as a medical student.

Q. Was that the school of medicine?

A. No, not exactly. It was part of the army where they kept students who will later become medical doctors in the army.

Q. Dr. Berenyi, we have information to the effect that while you were a University student you were a leader of a group—a communist party group, during which time you were active in the Communist Party and wore a Communist Party emblem in your lapel; that following your graduation from the University and upon your entrance into the Army, you continued your activity within the Communist Party. Do you understand? Do you still insist you were never a member of the Communist Party?

A. Yes I do.

Q. Do you still insist that you never wore the Communist Party emblem in your lapel?

A. Yes.

[fol. 287] Q. Do you still insist that you were never a Communist Party group leader within the University?

A. Yes.

Q. Do you still reside at 1549 Townsend Avenue, Bronx, New York?

A. No, but I would like for you to keep this address in the record because this is my in-law's address since after July 1st, we may go to Boston to live and our address will again change.

Q. Where do you now reside?

A. 307 Central Aveune, Orange, New Jersey.

Q. How long have you lived there?

A. I have moved into this apartment in July 1958.

Q. Are you presently working in a hospital in New Jersey?

A. Yes.

Q. What is the name of this hospital?

A. Mountainside Hospital, Montclair, New Jersey.

Statement Concluded

I have read the foregoing statement, consisting of six (6) pages. I state that the answers made therein by me are true and correct to the best of my knowledge and belief, and that this statement is a full, true and correct record of the interrogation on the date indicated by above named

officer of the Immigration and Naturalization Service. I have initialled each page of this statement.

Signature KALMAN BERENYI
KALMAN BERENYI

Subscribed and sworn to before me at New York, New York, Jan. 28, 1959

(s) Oscar H. Colton, Investigator, U. S. Immigration and Naturalization Service.

Witnessed by Sidney Foss

[fol. 288] GOVERNMENT'S EXHIBIT 1-D

IMMIGRATION AND NATURALIZATION SERVICE

Record of Sworn Statement in Affidavit Form

AFFIDAVIT

In Re: Kalman John Berenyi File No. A10 927 995

Executed at Boston, Mass. Date 2-19-62

Before the following officer of the U. S. Immigration and Naturalization Service:

(s) JOSEPH B. SULLIVAN General Attorney (Nationality)

I, Kalman John Berenyi, acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to make a sworn statement before him in the above-named case. I understand that any statement which I make must be freely and voluntarily given and that it may be used by the Government as evidence in any proceedings against me or any

other person. Being duly sworn, I make the following statement freely and voluntarily:

I, Kalman John Berenyi on oath depose and say that I never at any time during my life, either in this country, the United States, or any other country have I ever been a member of the Communist Party or any affiliate thereof. During my term in Medical School, Budapest, Hungary I did belong to the MAGYAR EGYEPEM: STAK FOISKOLA—SOK SZERVEZEIE (Hungarian University Student Organization) This organization sponsored sports activities excursions to mountains etc. The Organization dissolved in about 1948 or 1949—While I was a Medical Student, and a Doctor in Hungarian [fol. 289] Army (1949 to 1956) I was approached by a representative of the Communist Party assigned to my unit to join the Party. They impressed on me that it would be an honor to join the party and I would obtain greater benefits such as a better job, better location etc. However, I never did join the party and neither did I ever attend any close party meetings. I still have my parents living in Budapest, Hungary. We correspond frequently. I want it definitely understood that I have no use whatsoever for the Communist party.

(Signed) KALMAN J. BERENYI

Sworn to before me this 19th day of February 1962.

(Signed) JOSEPH B. SULLIVAN
General Attorney (Nationality)

PROCEEDING IN COURT OF APPEALS

MOTION TO DISMISS APPEAL—Filed August 4, 1965

Now comes the District Director of the Immigration and Naturalization Service, by his attorney W. Arthur Garrity, Jr., United States Attorney for the District of Massa-

chusetts, and moves that the above appeal be dismissed for want of diligent prosecution, in that the appellant's brief and record appendix were originally due on June 14, 1965, and that an enlargement of time was granted to and in-
[fol. 290] cluding July 6, 1965, and no further enlargements of time were sought by or granted to the appellant although appellant has not as yet filed his brief and record appendix.

W. Arthur Garrity, Jr., United States Attorney,
Stanislaw R. J. Suchecki, Assistant U. S. Attorney.

IN THE UNITED STATES COURT OF APPEALS

AFFIDAVIT OF LEON B. SAVETSKY IN OPPOSITION TO MOTION TO DISMISS APPEAL—Filed August 9, 1965

State of New York, City of New York, County of New York, ss.:

Leon B. Savetsky, being duly sworn, deposes and says:

That your deponent is an attorney duly admitted to practice in the State of New York and formerly a partner in the Law Firm of Spar and Burroughs, Esqs., the attorneys for the petitioner-appellant herein.

That this affidavit is respectfully submitted in opposition to the respondent-appellee's motion to dismiss the appeal herein and in support of a request for a further
[fol. 291] enlargement of time in which the petitioner-appellant may file his brief and record appendix herein.

Your deponent was one of the petitioner's trial counsel in the District Court and participated in the final hearing in November and December, 1964. Subsequent thereto and in the month of February, 1965, your deponent severed his association with the Law Firm of Spar and Burroughs, Esqs., and has been engaged in the practice of law individually since that time at another location.

On or about July 19th, 1965, your deponent received a telephone call from Charles Spar, Esq., in which Mr. Spar stated that he had been ill and away from the office for

some time as a result of which he had not been able to complete the brief and appendix herein. He requested me to complete these papers on his behalf to which request your deponent readily consented.

The record appendix consisting of 270 pages, including all of the trial testimony and exhibits, has already been printed in galley proof, compared for accuracy and returned to the printer in final form. The said record appendix was originally submitted on July 28th, 1965 but due to mechanical difficulties the galley proof was not returned until August 5th, 1965. The name and address of the printer [fol. 292] is Benjamin H. Tyrrel, 110 Greenwich Street, New York 6, New York. The brief consisting of 35 typewritten pages has also been submitted for printing and will be completed in final form not later than August 11th, 1965. Service and filing can and will be made not later than August 12th, 1965.

It is respectfully submitted that the delay in serving and filing the brief and record appendix has in no way either been wilfull, intentional or deliberate, but resulted solely from the circumstances hereinabove set forth.

Wherefore, it is respectfully requested that the instant motion to dismiss the appeal be denied and that this Court extend the time for the said serving and filing to August 12th, 1965.

Leon B. Savetsky

Sworn to before me this 6th day of August, 1965.

Harold S. Howarth, Notary Public, State of New York, No. 41-1873700, Qualified in Queens County, Term Expires March 30, 1966.

[fol. 293]

IN THE UNITED STATES COURT OF APPEALS

ORDER OF COURT DENYING MOTION TO DISMISS—
August 9, 1965

Upon consideration of motion to dismiss appeal and memorandum in opposition thereto,

It is ordered that said motion to dismiss be, and the same hereby is, denied; and further

It is ordered that the time for filing brief for appellant and record appendix thereto be, and the same hereby is, enlarged to and including August 12, 1965.

By the Court:

Roger A. Stinchfield, Clerk, By: Dana H. Gallup, Chief Deputy Clerk.

[fol. 295]

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 6531

KALMAN J. BERENYI, Petitioner, Appellant,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, Respondent, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge*, MCENTEE, *Circuit Judge*, and CAFFREY, *District Judge*.

Charles Spar, with whom *Leon B. Savetsky* and *Spar and Burroughs* were on brief, for appellant.

Stanislaw R. J. Suchecki, Assistant U. S. Attorney, with whom *W. Arthur Garrity, Jr.*, United States Attorney, was on brief, for appellee.

OPINION OF THE COURT—November 1, 1965

MCENTEE, *Circuit Judge*. This is an appeal by one Kalman J. Berenyi from a final order of the United States District Court for the District of Massachusetts denying his petition for naturalization. The petitioner, a Hungarian national, was born in Budapest in 1928. He received his early education there and in 1946 entered the Medical School at the University of Budapest. The Russian troops first occupied Hungary in 1945 and it is apparent from the

record that during the time of the petitioner's attendance [fol. 296] at the university it had become subjected to strong Communist influence and pressure. In 1949, while still a student at the medical school, the petitioner joined the Hungarian army which was then under Communist domination and control. While in the army he continued his medical studies at the university and after graduation in 1952 became a medical officer. When he left the army in 1956 he had attained the rank of captain. The petitioner did not participate in the unsuccessful Hungarian uprising against the Russians in 1956 but in the confusion that resulted from it he and his wife fled from Hungary into Austria in the fall of 1956 and from there came to this country. The record shows that they were admitted to the United States for permanent residence on December 4, 1956. Immediately after his arrival here the petitioner resumed his medical career in various hospitals in New York and New Jersey and moved to Massachusetts in 1959 where he and his wife presently reside.

On January 30, 1962, the petitioner filed his "Application to File Petition for Naturalization" in the United States District Court in Boston. This application, which was made under oath, contained amongst others, the following question:

> "Have you ever, in the United States or in any other place, (a) been a member of, or in any other way connected with, or associated with the Communist party either directly or indirectly through another organization, group or person?"

To this question the petitioner answered "No." The record further shows that a few days later on February 2, 1962, in Boston, the petitioner stated under oath to an officer of the Immigration and Naturalization Service in connection with his said application that he had never been a member of the Communist party either in the United States or in [fol. 297] any other country. On May 22, 1962, the petitioner again testified under oath before an officer of the

Immigration and Naturalization Service, this time in connection with his petition for naturalization, that he had never been a member of the Communist party. The naturalization examiner who conducted the preliminary hearing in this case, after a review of the evidence, found the above statements to be false and recommended that the petition for naturalization be denied under 8 U.S.C. §§ 1101 and 1427, the pertinent portions of which are hereinafter set forth. Thereupon, on demand of the petitioner, the district court required the examination of the petitioner and witnesses under oath before the court and in the presence of the court pursuant to 8 U.S.C. § 1447(b). At this hearing the petitioner testified at length and also produced several witnesses in support of his petition. The respondent produced two witnesses in opposition thereto. The record of the preliminary hearing before the naturalization examiner was also before the court by agreement of the parties. On the issue of whether the petitioner had even been a member of the Communist party in Hungary, the first government witness, Dr. Pal Halasz, testified that he had attended the University of Budapest Medical School between 1949 and 1955 and knew the petitioner while there; that he himself had been a member of the Communist party between 1948 and 1956; that while he was at the university Communist party meetings were held there about once a month; that he did not attend all of them but that he saw the petitioner at some meetings in 1950 or 1951. The second government witness, Dr. Gyorgy Kury, testified that he was a classmate of the petitioner at the medical school; that the witness was assigned to a small group of about twenty students which met every afternoon for the purpose of study of medical subjects and also for political [fol. 298] orientation; that the petitioner was also a member of this group; that in September of 1948 Kury attended a meeting of this group at which he heard the petitioner tell the group that he was a member of the Communist party since 1945 following the Soviet occupation of the country; that he was to be their instructor in

Marxism-Leninism and was responsible for their ideological education; that the petitioner also encouraged the group to read Soviet books, see Soviet movies and discuss the news.

The petitioner testified that he had never been a member of the Communist party of Hungary or of any other country and denied ever having made the statements attributed to him by Dr. Kury or that he was ever a political leader of any student or other group. He further testified to his opposition to Communism, his loyalty and attachment to the United States and his willingness to bear arms for this country. For the most part, the witnesses for the petitioner testified to statements made by the petitioner to them individually during the period between 1949 and 1956 of his opposition to Communism and his love for freedom.

In addition to other findings of fact, the court found that the petitioner became a member of the Communist party in Hungary in 1945 and remained a member for an indefinite number of years; that in the three instances above mentioned the petitioner gave false testimony for the purpose of facilitating his naturalization and obtaining the benefits of United States citizenship and therefore was not a person of good moral character within the meaning of the Immigration and Nationality Act, 8 U.S.C. § 1101(f)(6) and § 1427(a)(3).[1] On the basis of these findings the court

[1] The pertinent portions of 8 U.S.C. § 1101 provide:

"(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

"(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter; . . . ."

8 U.S.C. § 1427 provides:

"(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, . . . (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

[fol. 299] concluded that the petitioner had failed to establish his compliance with the statutory requirement of good moral character and denied the petition.

It is well settled that the petitioner in these cases has the burden of proving that he possesses each of the statutory qualifications for citizenship. *United States* v. *Schwimmer*, 279 U.S. 644, 649 (1929). A good moral character during the five year period immediately preceding the filing of his petition for naturalization is one of these statutory qualifications. 8 U.S.C. § 1427(a). No person who has given false testimony during this period for the purpose of obtaining any benefit under the Immigration and Nationality Act shall be regarded as, or found to be a person of good moral character. 8 U.S.C. § 1101(f)(6).

This petitioner as a part of his original application for a petition for naturalization and also in connection with his petition for naturalization itself, flatly stated that he had never been a member of the Communist party in Hungary or elsewhere. The government introduced testimony contradicting these statements. The petitioner's oath subscribing to his petition made out a prima facie case that his character was good. *Krausse* v. *United States*, 194 F.2d 440 (3d Cir. 1952). "Prima facie" evidence does not shift the burden of proof, see *Commissioner* v. *Young Motor Co.*, 316 F.2d 267, 271 (1st Cir. 1963), but it did impose a burden on the government of going forward. *Krausse* v. *United States*, supra; see *Epstein* v. *Boston Housing Authority*, [fol. 300] 317 Mass. 297, 302, 1944, and cases cited. The court's belief of the evidence that petitioner had been a Communist adequately satisfied that burden. As a result the district court found that the petitioner failed to sustain his burden of proof. We must affirm unless we find that this determination was clearly erroneous, and in our consideration of that question we must accord due weight to the opportunity of the district judge to observe the conduct and demeanor of the witnesses and particularly the conduct, demeanor and credibility of the petitioner himself. On the basis of a careful review of the entire record

in this case we cannot find the clear error which we are obliged to find under Rule 52(a) of the Federal Rules of Civil Procedure if we are to set aside the final order of the district court.

Judgment will be entered affirming the order of the district court.

[fol. 301]

IN THE UNITED STATES COURT OF APPEALS

JUDGMENT—November 1, 1965

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

Roger A. Stinchfield, Clerk.

Enter: Aldrich, Ch. J.

Thereafter, on November 16, 1965, mandate issued.

[fol. 302] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 303]

SUPREME COURT OF THE UNITED STATES

No. 960—October Term, 1965

KALMAN J. BERENYI, Petitioner,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ORDER ALLOWING CERTIORARI—April 18, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1965

No. 66

KALMAN J. BERENYI,

Petitioner,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1965

No.

KALMAN J. BERENYI,

Petitioner,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the First Circuit which affirmed an order of the United States District Court for the District of Massachusetts denying the petitioner's petition for naturalization.

Opinions Below

The opinion of the Court of Appeals which is reproduced in Appendix A, hereto, is reported at 352 F. 2d 71. The opinion of the District Court (A 259-265)* which contained its findings of facts and conclusions of law, is reported at 239 F. Supp. 725.

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* Refers to pages of Petitioner's Appendix in Court of Appeals.

Jurisdiction

The judgment of the Court of Appeals was entered on November 1, 1965 and is reproduced in Appendix B, hereto. This Court's jurisdiction arises under 28 U.S. Code, section 1254(1).

Questions Presented

I. Whether the Court of Appeals ererd in upholding the District Court's findings of fact that the petitioner was a member of the Communist Party of Hungary and that he therefore testified falsely in denying same, and that he was thus not a person of good moral character within the meaning of the Immigration and Nationality Act.

A. Whether in the context of the entire record, the evidence adduced against the petitioner constituted substantial evidence upon which a finding of Communist Party membership would not be clearly erroneous.

II. Whether in light of this Court's decisions in *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469, *Rowoldt* v. *Perfitto*, 355 U.S. 115 and *Scales v. United States*, 367 U.S. 203, 222, it was error for the Court of Appeals to uphold a finding of Communist Party membership in a naturalization proceeding without evidence that such membership consisted of a "meaningful association."

Statutes Involved

(1) Section 101(f)(6) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1101 (f)(6), provides in part:

"(f) For the purposes of this chapter—No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;"

(2) Section 313(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1424(a)(2), provides in part:

"(a) Notwithstanding the provisions of section 405 (b) of this act, no person shall hereafter be naturalized as a citizen of the United States—

(2) who is a member of or affiliated with (A) the Communist Part of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or any State of the United States, of any foreign state, or any political or geographical subdivision of any foreign state; * * * ".

(3) Section 316(a) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1427(a), provides in part:

"(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing of his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years, and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half

of that time, and who has resided in the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

(4) Rule 52(a) of the Federal Rules of Civil Procedure provides:

"(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

Statement of the Case

A. Administrative Proceedings

On January 30, 1962, the petitioner filed a petition for naturalization (A 259). After an extended preliminary hearing conducted pursuant to Title 8 U. S. C. Section 1446, a designated naturalization Examiner recommended to the District Court that the petition be denied on the grounds that the petitioner's membership in the Communist party of Hungary and his advocacy of the doctrines of Communism have rendered him ineligible for naturalization under Title 8 U.S.C. Section 1424, and that during the period for which the petitioner is required to establish good moral character, he testified falsely for the purpose of facilitating his naturalization thereby obtaining a benefit under the Immigration and Nationality Act and thus become ineligible for naturalization by virtue of the provisions of Title 8 U. S. C. Sections 1101 and 1427 (A 260, 261).

B. Proceedings in the District Court

The final hearing on the petitioner's application for naturalization was a joint proceeding involving the petitioner's application together with the petition for naturalization of his wife, Magdalena Retsagi Berenyi (A 3). Both petitioners testified in support of their own respective petitions and the petitions of each other. In addition, five other witnesses testified in support of the petitions for naturalization. The government produced two witnesses in opposition thereto.

Inasmuch as the testimony elicited was the vital determinative factor upon which the District Court's findings of

fact and conclusions of law were based, it is necessary to briefly summarize same herein.

1. Testimony in Support of Petition

The petitioner testified he was born in Hungary on August 27, 1928. He was baptized in the Roman Catholic faith, was given a strict religious upbringing by his parents and as late as 1947 at the age of 18 or 19 was still an altar boy in an order of Franciscan nuns. He is presently a practicing Catholic (A 82), and has never been politically active at all (A 92, 93).

In September of 1946, he was admitted to the University of Budapest Medical School (A 83). At that time the school was not under complete Communist control, but the Communists were in the government and there were Communist groups and organizations therein (A 83).

In 1949, while a medical student, he joined the Hungarian army which thereafter provided for his tuition in medical school (A 89). This was the only way in which he could complete his education inasmuch as his parents were poor people and could not provide his expenses throughout (A 90). It was not necessary to be a member of the Communist party to be in the armed forces and a great many non-Communists were similarly in the army (A 89). This fact was confirmed by the government witness Kury (A 62, 63).

While a medical student and also a member of the army, he was approached by members of the party and urged to join (A 86). However, petitioner never joined the party nor did he ever attend any closed meetings of the Communist party (A 84, 85, 86, 87). He attended open meet-

ings to which he was invited and at which other non-Communist, were present, wherein the Communists attempted to indoctrinate the students in Communist ideology (A 87). Such invitations were tantamount to an order and his attendance thereat was under fear of serious adverse consequences if he failed to do so (A 87). This too was confirmed by the testimony of the government witness Halasz who also stated that the petitioner was an outstanding student with respect to whom the Communists would have made every effort to recruit him into the party (A 24, 25, 29).

At about the time of his graduation in 1952, the petitioner married Magdalena Retsagi (A 91) a classmate at medical school whom he had met in 1948 (A 83). They were married in a religious ceremony though such rites were officially frowned upon (A 92).

Following graduation, the petitioner served as an officer in the medical corp of the army and was stationed as a medical officer at various locations (A 90). In 1956, he was promoted to Captain (A 90).

During the Hungarian uprising in October and November of 1956, the division in which the petitioner was serving fought the Russians, and petitioner was on duty treating people who were wounded in the fighting (A 100).

After the uprising was crushed, the petitioner sought to escape from Hungary at the risk of being caught as a deserter. He prevailed upon his commanding officer to furnish him with a document which would indicate that he was released from active duty. He realized that if he were stopped and examined such document would probably be of no avail, but he took the risk (A 93, 94, 95). The

original document was introduced in evidence as petitioner's Exhibit "A" and the translation thereof as Exhibit "B" (A 258). On November 19, 1956, petitioner, his wife and her aunt and uncle left Budapest and set out for the Austro-Hungarian border (A 94, 111). He and his wife took only their medical credentials and a change of clothes with them, leaving all of their furniture and personal possessions behind (A 95). Their escape from Hungary was vividly described in testimony by the petitioner, his wife and her aunt, Gertrude Farkas.

The petitioner and his wife spent several days in Austria and were thereafter flown to the United States where they were admitted for permanent residence on December 4, 1956 (A 96).

Following his arrival in this country, the petitioner immediately resumed his medical career at various hospitals in New York and New Jersey, fulfilling his internship and residency requirements thereat (A 96, 97). On July 1, 1959, petitioner and his wife moved to Massachusetts where they have resided since (A 97). He has taken and passed his medical state board examinations in Massachusetts, Illinois and Virginia (A 97). He passed his specialty board examination in anesthesiology in April of 1964 and is a board certified diplomate in anesthesiology (A 98). He has been and is presently associated with various hospitals in Massachusetts and has been a senior instructor on the staff of Tufts Medical School (A 97, 98).

The petitioner testified without reservation or hesitation to his opposition to Communism, his loyalty and attachment to the United States and the Constitution and his

willingness to fight and bear arms on behalf of this country (A 99, 100).

He categorically denied ever having made the statement attributed to him by Kury or that he was a political leader in any student study group or other group of any kind (A 88, 98, 99).

The petitioner's wife, Dr. Magdalena Retsagi Berenyi, testified in support of her own petition for naturalization which was heard jointly with that of the petitioner and which was granted. She came from a well-to-do family whose business and property had been confiscated by the Communist government (A 106). Indeed her mother, father and two younger sisters had left Hungary in 1948 and came to the United States to escape the Communist regime (A 104). They were permitted to leave because her father was a Czech citizen and travelled on a Czechoslavakian passport and his wife and children under eighteen were permitted to accompany him (A 104, 109, 110). Magdalena Berenyi also applied for an exit permit but was refused because she was over eighteen years of age (A 104). She described the hatred which both she and her husband had for Communism and the Communist government of Hungary and their constant desire to leave the country and achieve freedom (A 110-112).

A further witness for the petitioner was Lorand De Bickish, a former Hungarian national who was a naturalized citizen of the United States and was a project engineer residing in Newton, Massachusetts (A 121). Mr. De Bickish was an avowed anti-communist who had been arrested twice (A 124) and imprisoned on one occasion for

six months for attempting to escape from Hungary in 1948. Also, his brother was a broadcaster for Radio Free-Europe in Munich and in 1955 he was exiled for four months to a small town in eastern Hungary because he maintained contact with his said brother (A 125). During that exile, the petitioner and his wife were the only persons who visited him (A 125). They also were the godparents of his child (A 126). He first met the petitioner in 1950, having previously been a friend of petitioner's wife (A 126). He described how he and the petitioner often discussed politics and the petitioner always voiced views opposing Communism and the Hungarian government (A 127). They used to listen clandestinely to Radio Free Europe, the Voice of America and B. B. C. together, which was forbidden by the government (A 127). On many occasions they talked together of leaving Hungary and escaping to freedom (A 128).

Another witness for the petitioner was Dr. Ilona Raditz Ring, resident pathologist at Temple University, who was also a former Hungarian national and had become a naturalized United States citizen (A 73, 79). She was formerly a student at the University of Budapest Medical School, having been two years senior therein to the petitioner and his wife, and having graduated therefrom in 1950 (A 73, 75). Following her graduation, she had been a faculty member at the medical school (A 78). She testified that from about 1949 or 1950 on, she saw petitioner about once a month and had occasion to discuss with him the political problems of the country (A 74, 75). The petitioner often expressed his opposition to Communism to her and his desire to leave Hungary and go to a free country

(A 76, 77). In the United States, petitioner had often expressed his happiness and gratitude at being here (A 80).

Mrs. Charlotte Ray, the mother-in-law of petitioner testified that she had left Hungary in 1948 together with her husband and two younger daughters and had become a naturalized United States citizen in 1954 (A 132, 133). Her husband had a large textile manufacturing business which had been nationalized by the Hungarian government without compensation. She had every reason to be and was bitterly opposed to Communism (A 133, 134). She first met the petitioner in December of 1956 when he came to this country as her oldest daughter's husband (A 135). Since that time, the petitioner had on many occasions in her presence expressed his hatred for Communism and his love for this country and the freedom which it offered (A 136).

Paulette Farkas, a naturalized United States citizen, who was the aunt of Magdalena Berenyi, testified that she had lived in the same apartment in Budapest with the petitioner and his wife following their marriage in 1952 until they left the country in 1956 (A 137, 138). She and her husband escaped into Austria together with the petitioner and his wife (A 138). She knew the petitioner since 1950, and between that time and their exit from the country, she had on numerous occasions discussed the political conditions that existed. Petitioner always expressed his opposition to Communism and his desire for freedom (A 138, 139).

The testimony of the last witness for the petitnoner, Harry Flam, a brother-in-law, was stipulated to between counsel to the effect that he would testify that petitioner

was of good moral character, opposed to Communism and attached to the principles of the constitution (A 139, 140).

2. *The Adverse Testimony*

The government produced two witnesses whose testimony was offered in opposition to the petition. The first government witness was Dr. Pal Halasz, a physician and surgeon, who resided in Peoria, Illinois. He had attended the University of Budapest Medical School between 1949 and 1955 and knew the petitioner therefrom (A 14). The witness had himself been a member of the Communist party between 1948 and 1956 (A 18). While he was at the university, Communist party meetings were held about once a month, but he did not attend all of them (A 19, 20). He testified that he saw the petitioner at some meetings in 1950 or 1951, and when asked to be specific, he stated at perhaps two or three meetings and indeed was not even certain it was more than one (A 21, 31). He had no specific memory of what occurred at any meeting which petitioner attended (A 31). He did not recall whether these meetings were open or closed (A 32). Most of the time the Communists invited the attendance of students whom they wished to indoctrinate (A 36). These visitors would not be identified as non-members (A 36). When a person was invited to attend it was a must that he do so or risk dire consequences (A 24, 25). The petitioner was an outstanding student and the Communists would naturally have sought to recruit him (A 29). He had never seen a party membership card of the petitioner though he had on occasions been the doorkeeper at meetings (A 27, 30), nor had he ever seen petitioner's name listed in any party records (A 30), nor did he recall the petitioner ever speaking or

voting at such meetings (A 26, 27, 32). Indeed, Halasz testified that he did not know whether petitioner was or was not a member, but merely assumed that he was because he saw him at meetings (A 34). He knew, in fact, that petitioner was actually opposed to Communism and had heard him speak against the Communist party and the regime (A 33, 34).

The second government witness was Dr. Gyorgy Kury, a physician residing in Brookline, Massachusetts (A 37). He had attended medical school at the University of Budapest commencing in the same class with petitioner in 1946, but during the first two years had no contact with him (A 38, 43, 44, 46). In September of 1948, he was assigned to a small study group of about twenty students which met every afternoon (A 50). The purpose for these groups was the study of medical subjects and also political orientation (A 46, 50, 51). The witness attended only one meeting of a group wherein the petitioner was also a member before transferring to another group (A 53). At this meeting in September of 1948, while the members told each other something of their respective backgrounds (A 51), the witness stated that he heard the petitioner tell the group that he was a member of the Communist party since 1945, following the Soviet occupation of the country, and that he was to be their instructor in Marxism-Leninism and was responsible for their ideological education (A 40, 41, 51). Petitioner also was said to have told the group to read Soviet books, see Soviet movies and discuss the news (A 42, 52). Petitioner spoke for about five minutes on that occasion (A 51). Dr. Kury never attended a meeting of this study group again, having thereafter transferred to another group (A 53). He did not remember the exact words used

by petitioner on this occasion and did not remember the names of any other persons in the group (A 51, 52). He had made no notes of this event (A 51). Except for this one occasion he had never heard petitioner state that he was or had been a Communist (A 53) and he had no close contact with the petitioner thereafter (A 58, 60).

In addition to the foregoing testimony certain documentary exhibits were entered into evidence which consisted mainly of the transcripts of prior testimony by the petitioner and the government witnesses taken before the Immigration and Naturalization Service. The testimony contained therein was in the main substantially the same as the trial testimony and added nothing of a consequential nature thereto.

C. District Court's Findings of Fact and Conclusions of Law

Based upon the above evidence, the District Court made certain specific findings of fact which were contained in its opinion dated March 29, 1965, which, although not separately numbered, were, insofar as herein pertinent, as follows:

1. That the petitioner became a member of the Communist party in Hungary in 1945.

2. That the petitioner remained a member of the Communist party for an indefinite number of years.

3. That the petitioner attended closed meetings of the Communist party.

4. That the petitioner was in charge of instruction in communist ideology and student study group meetings for an undetermined period of time.

Based upon the findings of these subordinate facts, the District Court found as ultimate facts that the petitioner knowingly testified falsely before the Immigration and Naturalization service on three occasions within the statutory period required for good moral character when he denied membership in the Communist party and was, therefore, not a person of good moral character within the meaning of the Immigration and Nationality Act.

As its conclusion of law, the District Court held that on the basis of the facts which it found, as hereinabove set forth, the petitioner had failed to establish that during the required statutory period he had been and still was a person of good moral character within the meaning of the Immigration and Nationality Act (A 259-265).

D. Opinion of the Court of Appeals

The Court of Appeals affirmed the order of the District Court on the ground that the petitioner had failed to sustain his burden of proving that he possessed the statutory qualifications for naturalization, and more specifically the qualification of good moral character during the required statutory period. While the Court of Appeals conceded that the petitioner had made out a prima facie case of good moral character, it held that the District Court's belief of the adverse testimony satisfied the government's burden of going forward following the presentation of the prima facie case, and that the said Court was therefore justified in holding that the petitioner had failed to sustain his overall burden of proof. It concluded that in according due weight to the opportunity of the trial judge to observe the conduct and demeanor of the witnesses, it could not as a

matter of law find the conclusion of the District Court to have been clearly erroneous within the meaning of Rule 52(a) of the Federal Rules of Civil Procedure.

REASONS FOR GRANTING THE WRIT

1. The judgment at bar is based upon a complete failure to consider the substantive content of the testimony that was offered in opposition to the petition and its relation to the testimony as a whole in the entire proceeding. The crux of the District Court's decision herein was its finding that the petitioner had been a member of the Communist Party of Hungary. Lacking such finding, it could not have proceeded to find that the petitioner had given false testimony in denying such membership and that he was therefore not a person of good moral character within the meaning of Sections 101(f)(6) and 316(a) of the Immigration and Nationality Act of 1952.

It is apparent that the District Court's finding of the petitioner's Communist Party membership is based solely upon the testimony of the witness Kury. Kury's testimony, in turn, is founded solely upon an alleged oral admission purportedly made by the petitioner on a single occasion of five to ten minutes duration more than sixteen years prior to the final hearing herein. There is absolutely no corroboration of Kury's testimony in this regard whatsoever. There is similarly no other testimony or evidence at all which in any respect would tend to prove petitioner's membership in the Communist Party or participation in activities in furtherance of the Communist cause.

The inherent weakness in the evidentiary value of such an extrajudicial admission which concerns the main con-

troverted fact of a case, standing alone, is recognized by Wigmore in his treatise. Wigmore on Evidence, Third Edition, Volume IV, Sections 1055 and 1056.

Of course, the insidious nature of such testimony lies in the fact that it places the petitioner in the impossible position of having to prove a negative proposition.

All that the petitioner could possibly do to counter the testimony of Kury was to present to the Court through his own testimony and the testimony of such witnesses as were available, a complete and candid picture of his entire background and history. The entire tenor of his personal life and associations militate against the thrust of Kury's testimony. He categorically and repeatedly denied that he had ever made the statements attributed to him by Kury or that he had ever held any membership or position in the Communist Party or any other political organization. His religious training, upbringing and continued observance would appear to be completely inconsistent with any membership in the party. Indeed, in the year 1945, when petitioner was found by the District Court to have joined the party, he was sixteen years old. The testimony of the petitioner's witnesses, including persons who themselves had suffered deprivation of liberty and property at the hands of the Communist regime and had every reason to detest Communism, was unqualifiedly in support of the petitioner's case.

But perhaps the strongest testimony in support of the petitioner was that given by the government's other witness, Halasz. Halasz was himself an admitted member of the Communist Party who knew the petitioner much more

closely than Kury. He could not, however, truthfully state that the petitioner had even been a member of the party. He stated that the possible one, two or three occasions that he saw the petitioner in attendance at a meeting, could very well have been open meetings to which petitioner had been invited and which, under the circumstances then existing in Hungary, he was compelled to attend. Indeed, Halasz stated that he knew the petitioner's actual views to be extremely anti-Communist.

In addition to all of this testimony in support of the petitioner, was the complete absence of any objective evidence to prove his membership in the Communist Party. There was no testimony that he ever held a membership card therein, paid any party dues, voted at any party meetings, participated in any party discussions, nor was his name seen in any party records.

Indeed, even if the testimony of Kury was to be believed as against the weight of all of the other evidence, it would only prove that the petitioner made the statement attributed to him by the said witness. It would certainly in no way prove the truth of the content of the said statement. It is of further interest to note that the meeting at which Kury claimed such statement to have been made by the petitioner, was never even alleged to have been a Communist Party meeting.

It is thus respectfully submitted that the finding of petitioner's membership in the Communist Party is clearly erroneous in that it is in conflict with the holding of this Court in *United States* v. *United States Gypsum Co., et al.*, 333 U.S. 364, 395, and decisions from other circuits which

have followed it, to wit: *United States* v. *Kaplan*, 277 F. 2d 405 (5th Cir., 1960) and *Simpson* v. *United States*, 322 F. 2d 688 (5th Cir., 1963).

2. A further reason for the granting of certiorari herein is that the judgment at bar has in effect determined an important question of federal law which has not been, but should be settled by this Court. The question involved is the nature and quality of evidence by which a petitioner for naturalization may be judicially found to have been a member of the Communist Party so as to bar him from naturalization. While the order denying naturalization was technically based upon a lack of good moral character resulting from a denial of membership, there is no doubt that the said conclusion was premised upon the finding of membership, and as such, the said finding lies at the heart of the instant case.

In *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469, *Rowoldt* v. *Perfitto*, 355 U.S. 115 and *Scales* v. *United States*, 367 U.S. 203, 222, this Court appeared to hold that in deportation and *Smith Act* proceedings, membership in the Communist Party must consist of a "meaningful association" which amounted to more than nominal listing of the person's name on the party rolls.

The record in the case at bar is of course completely barren of any evidence pertaining to such "meaningful association" on the part of the petitioner.

While it is of course true that the burden of proof in deportation and criminal proceedings does not apply in naturalization proceedings, it is submitted that the substantive principles enunciated by this Court in the above cited

cases with respect to the meaning of Communist Party membership, control the determination of the question of such membership regardless of the nature of the proceeding.

Indeed the language of Section 241(a)(6)(c) of the Immigration and Nationality Act of 1952, which was construed by this Court in the *Gastelum-Quinones* case, is identical with the language of Section 313(a)(2) of the Act which bars a member of the Communist Party from naturalization, except that the former pertains to deportation.

3. The importance of the right to naturalization and the basis upon which it was denied in the case at bar, furnishes an additional ground for the grant of certiorari. A denial of citizenship particularly to an alien such as the petitioner who has fled a hostile regime in his native country, is a grave and serious matter. Such denial not only deprives the applicant of the security which a citizen possesses against the possibility of deportation but also prevents the applicant from joining fully in the affairs of his new adopted land. This situation is all the more compelling in view of the fact that petitioner's wife was granted citizenship in the joint final hearing in the District Court that resulted in the denial of the petitioner's application.

CONCLUSION

This petition for a writ of certiorari should be granted and the judgment below reversed.

Respectfully submitted,

CHARLES SPAR
LEON B. SAVETSKY
Attorneys for Petitioner

APPENDIX A

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 6531.

KALMAN J. BERENYI,

PETITIONER, APPELLANT,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE,

RESPONDENT, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge,* MCENTEE, *Circuit Judge,* and CAFFREY, *District Judge.*

Charles Spar, with whom *Leon B. Savetsky* and *Spar and Burroughs* were on brief, for appellant.

Stanislaw R. J. Suchecki, Assistant U. S. Attorney, with whom *W. Arthur Garrity, Jr.,* United States Attorney, was on brief, for appellee.

OPINION OF THE COURT.

November 1, 1965.

MCENTEE, *Chief Judge.* This is an appeal by one Kalman J. Berenyi from a final order of the United States

District Court for the District of Massachusetts denying his petition for naturalization. The petitioner, a Hungarian national was born in Budapest in 1928. He received his early education there and in 1946 entered the Medical School at the University of Budapest. The Russian troops first occupied Hungary in 1945 and it is apparent from the record that during the time of the petitioner's attendance at the university it had become subjected to strong Communist influence and pressure. In 1949, while still a student at the medical school, the petitioner joined the Hungarian army which was then under Communist domination and control. While in the army he continued his medical studies at the university and after graduation in 1952 became a medical officer. When he left the army in 1956 he had attained the rank of captain. The petitioner did not participate in the unsuccessful Hungarian uprising against the Russians in 1956 but in the confusion that resulted from it he and his wife fled from Hungary into Austria in the fall of 1956 and from there came to this country. The record shows that they were admitted to the United States for permanent residence on December 4, 1956. Immediately after his arrival here the petitioner resumed his medical career in various hospitals in New York and New Jersey and moved to Massachusetts in 1959 where he and his wife presently reside.

On January 30, 1962, the petitioner filed his "Application to File Petition for Naturalization" in the United States District Court in Boston. This application, which was made under oath, contained amongst others, the following question:

> "Have you ever, in the United States or in any other place, (a) been a member of, or in any other way connected with, or associated with the Communist party either directly or indirectly through another organization, group or person?"

To this question the petitioner answered "No." The record further shows that a few days later on February 2, 1962, in Boston, the petitioner stated under oath to an officer of the Immigration and Naturalization Service in connection with his said application that he had never been a member of the Communist party either in the United States or in any other country. On May 22, 1962, the petitioner again testified under oath before an officer of the Immigration and Naturalization Service, this time in connection with his petition for naturalization, that he had never been a member of the Communist party. The naturalization examiner who conducted the preliminary hearing in this case, after a review of the evidence, found the above statements to be false and recommended that the petition for naturalization be denied under 8 U.S.C. §§ 1101 and 1427, the pertinent portions of which are hereinafter set forth. Thereupon, on demand of the petitioner, the district court required the examination of the petitioner and witnesses under oath before the court and in the presence of the court pursuant to 8 U.S.C. § 1447(b). At this hearing the petitioner testified at length and also produced several witnesses in support of his petition. The respondent produced two witnesses in opposition thereto. The record of the preliminary hearing before the naturalization examiner was also before the court by agreement of the parties. On the

issue of whether the petitioner had ever been a member of th Communist party in Hungary, the first government witness, Dr. Pal Halasz, testified that he had attended the University of Budapest Medical School between 1949 and 1955 and knew the petitioner while there; that he himself had been a member of the Communist party between 1948 and 1956; that while he was at the university Communist party meetings were held there about once a month; that he did not attend all of them but that he saw the petitioner at some meetings in 1950 or 1951. The second government witness, Dr. Gyorgy Kury, testified that he was a classmate of the petitioner at the medical school; that the witness was assigned to a small group of about twenty students which met every afternoon for the purpose of study of medical subjects and also for political orientation; that the petitioner was also a member of this group; that in September of 1948 Kury attended a meeting of this group at which he heard the petitioner tell the group that he was a member of the Communist party since 1945 following the Soviet occupation of the country; that he was to be their instructor in Marxism-Leninism and was responsible for their ideological education; that the petitioner also encouraged the group to read Soviet books, see Soviet movies and discuss the news.

The petitioner testified that he had never been a member of the Communist party of Hungary or of any other country and denied ever having made the statements attributed to him by Dr. Kury or that he was ever a political leader of any student or other group. He further testified to his opposition to Communism, his loyalty and attachment to the United States and his willingness to bear arms for this

country. For the most part, the witnesses for the petitioner testified to statements made by the petitioner to them individually during the period between 1949 and 1956 of his opposition to Communism and his love for freedom.

In addition to other findings of fact, the court found that the petitioner became a member of the Communist party in Hungary in 1945 and remained a member for an indefinite number of years; that in the three instances above mentioned the petitioner gave false testimony for the purpose of facilitating his naturalization and obtaining the benefits of United States citizenship and therefore was not a person of good moral character within the meaning of the Immigration and Nationality Act, 8 U.S.C. § 1101(f)(6) and § 1427(a)(3).[1] On the basis of these findings the court concluded that the petitioner had failed to establish his compliance with the statutory requirement of good moral character and denied the petition.

It is well settled that the petitioner in these cases has the burden of proving that he possesses each of the statutory qualifications for citizenship. *United States* v. *Schwim-*

---

[1] The pertinent portions of 8 U.S.C. § 1101 provide:

"(f) For the purposes of this chapter—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

"(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter; . . . ."

8 U.S.C. § 1427 provides:

"(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, . . . (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

mer, 279 U.S. 644, 649 (1929). A good moral character during the five year period immediately preceding the filing of his petition for naturalization is one of these statutory qualifications. 8 U.S.C. § 1427(a). No person who has given false testimony during this period for the purpose of obtaining any benefit under the Immigration and Nationality Act shall be regarded as, or found to be a person of good moral character. 8 U.S.C. § 1101(f)(6).

This petitioner as a part of his original application for a petition for naturalization and also in connection with his petition for naturalization itself, flatly stated that he had never been a member of the Communist party in Hungary or elsewhere. The government introduced testimony contradicting these statements. The petitioner's oath subscribing to his petition made out a prima facie case that his character was good. *Krausse* v. *United States,* 194 F. 2d 440 (3d Cir. 1952). "Prima facie" evidence does not shift the burden of proof, see *Commissioner* v. *Young Motor Co.,* 316 F.2d 267, 271 (1st Cir. 1963), but it did impose a burden on the government of going forward. *Krausse* v. *United States,* supra; see *Epstein* v. *Boston Housing Authority,* 317 Mass. 297, 302, 1944, and cases cited. The court's belief of the evidence that petitioner had been a Communist adequately satisfied that burden. As a result the district court found that the petitioner failed to sustain his burden of proof. We must affirm unless we find that this determination was clearly erroneous, and in our consideration of that question we must accord due weight to the opportunity of the district judge to observe the conduct and demeanor

of the witnesses and particularly the conduct, demeanor and credibility of the petitioner himself. On the basis of a careful review of the entire record in this case we cannot find the clear error which we are obliged to find under Rule 52(a) of the Federal Rules of Civil Procedure if we are to set aside the final order of the district court.

Judgment will be entered affirming the order of the district court.

APPENDIX B

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 6531.

KALMAN J. BERENYI,

PETITIONER, APPELLANT,

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE,

RESPONDENT, APPELLEE.

JUDGMENT

November 1, 1965

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court:

/s/ ROGER A. STINCHFIELD,

Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 960

KALMAN J. BERENYI, PETITIONER

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. A1–A7) is reported at 352 F. 2d 71. The opinion of the district court is reported at 239 F. Supp. 725.

JURISDICTION

The judgment of the court of appeals (Pet. A8) was entered on November 1, 1965. The petition for a writ of certiorari was filed on January 28, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence sustained the finding of the trial court that petitioner, an applicant for citizen-

ship, was not a person of good moral character, within the meaning of the Immigration and Nationality Act in that he had falsely denied that he had ever been a member of the Communist party in Hungary.

STATUTE INVOLVED

Section 316(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1427(a), provides as follows:

> No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Section 101(f)(6) of the Immigration and Nationality Act, 8 U.S.C. 1101(f)(6), provides as follows:

> For the purposes of this chapter—
> No person shall be regarded as, or found to be, a person of good moral character who, dur-

ing the period for which good moral character is required to be established, is, or was—

* * * * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

Section 335(b) of the Immigration and Nationality Act, 8 U.S.C. 1446(b), provides in pertinent part:

The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. * * * The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 1421 of this title.

STATEMENT

Petitioner, a Hungarian national, petitioned for naturalization. The petition was denied by the United States District Court for the District of Massachusetts on the ground that he had testified falsely for the purpose of facilitating his naturalization. The court of appeals affirmed.

1. The petitions for naturalization of petitioner and his wife were heard together. The government introduced the record of the preliminary examinations in both cases, pursuant to Section 335(b) of the Immigration and Nationality Act (R. 5, 8–13). In his application to file petition for naturalization, peti-

tioner denied that he had ever, in the United States or in any other place, "been a member of, or in any other way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person" (Gov't Ex. 1 D, R. 230). He reiterated that denial on two occasions while testifying before an officer of the Immigration and Naturalization Service. The government produced two witnesses to prove that those statements were false.

The first such witness was Dr. Pal Halasz, a physician and surgeon, residing in Peoria, Illinois, who had obtained his medical education in Budapest, Hungary, in the years 1949 to 1955 (R. 13–14). He had been a member of the Communist Party from 1948 to 1956. He attended party meetings about once a month from 1949 or 1950 until his graduation from medical school in 1955 (R. 18–20). At medical school, where petitioner was three years ahead of him, he saw petitioner at Communist Party meetings on more than one occasion during 1950 or 1951 (R. 20). Dr. Halasz testified that, at medical school, students whose membership in the party was desired, would be told to attend meetings and that it was known that failure to attend might entail such consequences as expulsion from school or loss of financial support (R. 24). At some of these meetings he had seen petitioner. He could not recall that he had heard petitioner speak at Communist Party meetings (R. 24–26, 28). Petitioner was an outstanding student, and there was particular pressure on the best students to join the Party (R. 26, 29). Dr. Halasz could not say whether petitioner had ever joined the party. He had never seen a mem-

bership card for the witness although he had occasionally served as doorkeeper at Party meetings (R. 27, 30). The witness could not recall whether petitioner attended closed as well as open meetings (R. 32). If petitioner ever spoke about the Communists in private conversations, it was not in favor of them (R. 33). The witness thought petitioner was a Party member because he had seen him at Party meetings, but the witness did not believe that petitioner was a Communist at heart (R. 34).

The second government witness was Dr. Gyorgy Kury who had received his medical education at the University of Budapest Medical School, where he was a classmate of petitioner whom he first met in 1946 (R. 37–38). The witness did not attend Communist Party meetings other than indoctrination meetings, and was not a member of the Communist Party (R. 39–40). Petitioner had been an instructor at an indoctrination meeting attended by the witness in September 1948. The witness was asked (R. 42):

> The COURT. What did he instruct in?
>
> The WITNESS. Marxism, Leninism. He said he was ideological person responsible for ideological education. He told us. Convince us to read Soviet books. We have to discuss newspaper, news among us and occasionally to see Soviet movies.
>
> The COURT. What if anything did he say about Communist ideology?
>
> The WITNESS. Well, I don't recall. This is what words, what he says: prefers that you do all these things and make up your mind, but he did not actually ask us to join to the Communist Party.

On cross-examination, Dr. Kury was asked further about the same meeting (R. 51–52):

> Q. Well, sir, give us the substance of this statement. How long did the statement take and what did he say? A. Well, it took about five or ten minutes. I don't really recall. Not more than five minutes usually when each member gave his life story.
>
> Q. What did he say? A. Well, he says that he joined the Communist Party in 19— after the Soviet troops occupied Hungary in 1945, and he is a man who is responsible for our ideological education, and said in general that all we can go to see Soviet film sometimes and how we can discuss newspapers and to read books, ideological books.

Petitioner was "most important person" at the meeting, but the witness did not recall the name of the student leader (R. 52). The witness did not recall any other statements by petitioner, as the witness had been transferred to another group (R. 53–54). As to his personal relations with petitioner, Dr. Kury said that he was not friendly and not an enemy (R. 44). Asked whether it were not a fact that he did not like petitioner, Dr. Kury replied that he "did not have any thing against him" (R. 54). Dr. Kury said that he attended no more study groups after 1949 having been forced out because he was hostile to the party (R. 55).

2. Petitioner, in his own behalf, testified that he had never been a member of the Communist Party of Hungary (R. 81–82), and had never made any statement such as that attributed to him by Dr. Kury. He did not join the Communist Party in 1945. At

the time the Soviet troops came in, in 1945, he was sixteen years old. He was then living with his parents and going to high school. He was very religious and was an altar boy with the order of St. Franciscan Nuns until 1947 (R. 82).

When petitioner entered the Budapest Medical School in September 1946, the school was not dominated by the Communist Party. There were Communist groups, but petitioner did not join any (R. 83). In 1948, when the Communists took over, they held meetings, about once a month, of groups of students in which they tried to indoctrinate the students.[1] He attended open meetings, but never attended any closed meetings. These meetings were supposed to be voluntary, but there could be serious consequences for non-attendance. Petitioner would speak occasionally if asked a question, and would give an answer such as was expected of him, but did not actively participate. He was never a Communist Party member, never had a Communist Party card, and never paid dues (R. 87–88). While a student, he joined the Hungarian army as a doctor in 1949 having been more or less ordered to do so. This provided him with free board, tuition and a little money for books, which he needed to complete his education. It was not necessary to be a Communist to enter the army. Upon graduation he received the rank of first lieutenant and, after three years, an automatic promotion to captain (R. 89–91). On June 7, 1952, he was married to Magda-

[1] In a statement under oath in connection with his application, petitioner said he had attended meetings of the whole school (R. 239).

lena Retsagi, a medical student who had also joined the army. The ceremony was both civil and religious, although religious ceremonies were then frowned upon (R. 91–92).

At the time of the 1956 uprising, petitioner was still in the army, but he and his wife were making plans to leave the country. In order to minimize the likelihood of being shot for desertion if he were caught, he persuaded his commanding officer to put down on his papers that he had asked to be released from the army. He and his wife then successfully eluded the Russians and got across the border into Austria (R. 93–95).[1] After a week in Austria, they were flown to the United States. In this country they were continuously employed in various hospitals, first as interns, then, after residency training, as licensed physicians. He had been a senior instructor in anesthesiology at Tufts University Medical School and was now engaged in private practice as an anesthesiologist. Petitioner testified that his acquaintance with Dr. Kury was only superficial. He did not recall Kury's name and recognized his face only when he saw him at the Immigration Service. He expressed his complete satisfaction with the United States and its form of government and would take an unqualified oath of allegiance (R. 99).

Other witnesses testified to petitioner's opposition to the Communist regime in Hungary. His wife,

[1] At the request of the trial judge, petitioner brought to court the paper which he procured from his commanding officer in Hungary for the purpose of explaining his absence from military duty (R. 94, 102; translation of document, R. 258).

testifying for him and in her own behalf, stated that she had never been a Communist herself. Her father had been the senior executive in a Budapest firm and came to the United States with his family in 1948. The witness was unable to accompany them because she was over the age of eighteen. She told in detail of petitioner's opposition to the Communist regime and described their flight across the border with an aunt and uncle in November 1956 (R. 102–120). Another Hungarian who escaped in 1956, a mechanical engineer, who had been imprisoned by the Communists and whose brother broadcast from Germany for Radio Free Europe, testified to a close relationship with the Berenyis and to petitioner's consistent opposition to the Communist regime when they were all in Hungary. He had known Mrs. Berenyi since 1947 and petitioner from about 1950 (R. 121–132). Testimony as to the opposition of both petitioner and his wife to Communism while they were living in Hungary was given by Mrs. Berenyi's aunt, who had escaped with her husband and the Berenyis across the border in 1956 (R. 136–139).

3. The trial court gave judgment denying the petition.[3] It found that petitioner became a member of the Communist Party in 1945, when the Russian troops occupied Hungary; that he attended closed meetings of the Communist Party; that he was in charge of communist ideology at student study group meetings for an undetermined period of time; that he did not participate in the uprising of 1956 but,

[3] The recommendation of the commissioner that Mrs. Berenyi's application be denied was disapproved (R. 266–267).

in the resulting confusion, fled with his wife and others into Austria and later entered the United States. The court found that petitioner falsely answered that he had not been a member of the Communist Party in his application to file petition for naturalization and on two occasions before an immigration examiner and that he had done so for the purpose of facilitating his naturalization. On this basis the court found that petitioner was not a person of good moral character as defined by the Immigration and Nationality Act.

ARGUMENT

Section 101(f)(6) of the Immigration and Nationality Act specifically provides that no person shall be found to be a person of good moral character if, during the period for which good moral character is required to be established, he "has given false testimony for the purpose of obtaining any benefits under this chapter." It was because the district court found that petitioner had falsely denied his membership in the Communist Party in Hungary in order to obtain the benefits of naturalization (and not because of membership as such) that petitioner was denied naturalization. The exact nature of petitioner's membership or the degree of his moral commitment to the Party in Hungary are thus not crucial to the question before the district court, which was whether petitioner had given false testimony to the naturalization examiner.

The finding of the district court that petitioner had lied when he stated that he had never been a member

of the Communist Party in Hungary cannot be said to be clearly erroneous. Contrary to petitioner's contention (Pet. 16), the district court's finding cannot be said to rest solely upon the testimony of Dr. Kury. The testimony of Dr. Halasz, who was obviously trying to be as favorable to petitioner as he honestly could be, shows that he regarded petitioner as a Communist in the period 1950–1951 (see e.g. R. 25, 28, 30, 32, 34). Moreover, petitioner's own statements are not entirely consistent. When asked by the examiner whether he attended open party meetings, he said that in the medical school "they were not meetings" but that "the whole school came together and talked about the Russian revolution" (R. 239). In the district court proceeding he said that when the Communists took over around 1948, they conducted indoctrination meetings for groups of students and that he attended such group meetings (R. 87, 99). The district court, which had the benefit of observing both petitioner and the witnesses against him, could reasonably find that false testimony to the naturalization examiner.

Petitioner is not permanently debarred from citizenship by the finding that he testified falsely in this proceeding. As the spouse of an American citizen, he can reapply for citizenship three years after his wife's admission to citizenship and must then prove his good moral character during that three year period. Sec. 319 of the Immigration and Nationality Act, 8 U.S.C. 1430. If he gives truthful answers at that time, he can be admitted to citizenship.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

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MARCH 1966.

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IN THE

Supreme Court of the United States

October Term, 1966

No. 66

KALMAN J. BERENYI,

Petitioner,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONER

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IN THE

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October Term, 1966

No. 66

KALMAN J. BERENYI,

Petitioner,

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Court of Appeals is reported at 352 F. 2d 71, and is reproduced in the record at R. 303-308. The opinion of the District Court, which contained its findings of fact and conclusions of law, is reported at 239 F. Supp. 725, and is reproduced in the record at R. 271-277.

Jurisdiction

The judgment of the Court of Appeals was entered on November 1, 1965 (R. 308) and the petition for certiorari was filed on January 28, 1966. The petition was granted on April 18, 1966 (R. 309). The jurisdiction of the Court rests on 28 U.S. Code, section 1254(1).

Statutes Involved

(1) Section 101(f)(6) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1101(f)(6), provides in part:

> "(f) For the purposes of this chapter—No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—
>
> (6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;"

(2) Section 241(a)(6)(c) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1251(a)(6)(c), provides in part:

> "(a) Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who—
>
> (6) is or at any time has been after entry, a member of any of the following classes of aliens:
>
> (c) Aliens who are members of or affiliated with (i) the Communist Part of the United States; (ii) any other totalitarian party of the United States; (iii) the Communist Political Association; (iv) the Communist or any other totalitarian party of any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; . . ."

(3) Section 313(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1424(a)(2), provides in part:

> "(a) Notwithstanding the provisions of section 405 (b) of this act, no person shall hereafter be naturalized as a citizen of the United States—

(2) who is a member of or affiliated with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or any State of the United States, of any foreign state, or any political or geographical subdivision of any foreign state; . . .".

(4) Section 316(a) of the Immigration and Nationality Act of 1952, 8 U.S. Code, section 1427(a), provides in part:

"(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing of his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years, and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided in the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

(4) Rule 52(a) of the Federal Rules of Civil Procedure provides:

"(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall

find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

Questions Presented

I. Whether the Court of Appeals erred in upholding the District Court's findings of fact that the petitioner was a member of the Communist Party of Hungary and that he therefore testified falsely in denying same, and was thus not a person of good moral character within the meaning of the Immigration and Nationality Act of 1952.

A. Whether in the context of the entire record, the evidence adduced against the petitioner constituted substantial evidence upon which a finding of Communist Party membership would not be clearly erroneous.

II. Whether in light of this Court's decisions in *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469, *Rowoldt* v.

Perfitto, 355 U.S. 115 and *Scales* v. *United States*, 367 U.S. 203, 222, it was error for the Court of Appeals to uphold a finding of Communist Party membership in a naturalization proceeding without any evidence that such membership consisted of a "meaningful association."

Statement of the Case

A. Administrative Proceedings

On January 30, 1962, the petitioner filed a petition for naturalization (R. 272). After an extended preliminary hearing conducted pursuant to Title 8 U.S.C. Section 1446, a designated naturalization Examiner recommended to the District Court that the petition be denied on the grounds that the petitioner's membership in the Communist party of Hungary and his advocacy of the doctrines of Communism have rendered him ineligible for naturalization under Title 8 U.S.C. Section 1424, and that during the period for which the petitioner is required to establish good moral character, he testified falsely for the purpose of facilitating his naturalization thereby obtaining a benefit under the Immigration and Nationality Act and thus became ineligible for naturalization by virtue of the provisions of Title 8 U.S.C. Sections 1101 and 1427 (R. 272, 273).

B. Proceedings in the District Court

The final hearing on the petitioner's application for naturalization was a joint proceeding involving the petitioner's application together with the petition for naturalization of his wife, Magdalena Retsagi Berenyi (R. 2). Both petitioners testified in support of their own respective peti-

tions and the petitions of each other. In addition, five other witnesses testified in support of the petitions for naturalization. The government produced two witnesses in opposition thereto.

Inasmuch as the testimony elicited was the vital determinative factor upon which the District Court's findings of fact and conclusions of law were based, it is necessary to briefly summarize same herein.

1. Testimony in Support of Petition

The petitioner testified he was born in Hungary on August 27, 1928. He was baptized in the Roman Catholic faith, was given a strict religious upbringing by his parents and as late as 1947 at the age of 18 or 19 was still an altar boy in an order of Franciscan nuns. He is presently a practicing Catholic (R. 87), and has never been politically active at all (R. 99, 100).

In September of 1946, he was admitted to the University of Budapest Medical School (R. 89). At that time the school was not under complete Communist control, but the Communists were in the government and there were Communist groups and organizations therein (R. 89).

In 1949, while a medical student, he joined the Hungarian army which thereafter provided for his tuition in medical school (R. 96). This was the only way in which he could complete his education inasmuch as his parents were poor people and could not provide his expenses throughout (R. 96, 97). It was not necessary to be a member of the Communist party to be in the armed forces and a great many non-Communists were similarly in the army (R. 96). This fact was confirmed by the government witness Kury (R. 66).

While a medical student and also a member of the army, he was approached by members of the party and urged to join (R. 92). However, petitioner never joined the party nor did he ever attend any closed meetings of the Communist party (R. 90-93). He attended open meetings to which he was invited and at which other non-Communist, were present, wherein the Communists attempted to indoctrinate the students in Communist ideology (R. 93, 94). Such invitations were tantamount to an order and his attendance thereat was under fear of serious adverse consequences if he failed to do so (R. 94). This too was confirmed by the testimony of the government witness Halasz who also stated that the petitioner was an outstanding student with respect to whom the Communists would have made every effort to recruit him into the party (R. 23-25, 30).

At about the time of his graduation in 1952, the petitioner married Magdalena Retsagi (R. 98) a classmate at medical school whom he had met in 1948 (R. 89). They were married in a religious ceremony though such rites were officially frowned upon (R. 98).

Following graduation, the petitioner served as an officer in the medical corp of the army and was stationed as a medical officer at various locations (R. 97). In 1956, he was promoted to Captain (R. 97).

During the Hungarian uprising in October and November of 1956, the division in which the petitioner was serving fought the Russians, and petitioner was on duty treating people who were wounded in the fighting (R. 107, 108).

After the uprising was crushed, the petitioner sought to escape from Hungary at the risk of being caught as a deserter. He prevailed upon his commanding officer to

furnish him with a document which would indicate that he was released from active duty. He realized that if he were stopped and examined such document would probably be of no avail, but he took the risk (R. 100-102). The original document was introduced in evidence as petitioner's Exhibit "A" and the translation thereof as Exhibit "B" (R. 271). On November 19, 1956, petitioner, his wife and her aunt and uncle left Budapest and set out for the Austro-Hungarian border (R. 101-120). He and his wife took only their medical credentials and a change of clothes with them, leaving all of their furniture and personal possessions behind (R. 102). Their escape from Hungary was vividly described in testimony by the petitioner, his wife and her aunt, Gertrude Farkas.

The petitioner and his wife spent several days in Austria and were thereafter flown to the United States where they were admitted for permanent residence on December 4, 1956 (R. 102, 103).

Following his arrival in this country, the petitioner immediately resumed his medical career at various hospitals in New York and New Jersey, fulfilling his internship and residency requirements thereat (R. 103, 104). On July 1, 1959, petitioner and his wife moved to Massachusetts where they have resided since (R. 104). He has taken and passed his medical state board examinations in Massachusetts, Illinois and Virginia (R. 104). He passed his specialty board examination in anesthesiology in April of 1964 and is a board certified diplomate in anesthesiology (R. 105). He has been and is presently associated with various hospitals in Massachusetts and has been a senior instructor on the staff of Tufts Medical School (R. 104, 105).

The petitioner testified without reservation or hesitation to his opposition to Communism, his loyalty and attachment to the United States and the Constitution and his willingness to fight and bear arms on behalf of this country (R. 106, 107).

He categorically denied ever having made the statement attributed to him by Kury or that he was a political leader in any student study group or other group of any kind (R. 95, 106).

The petitioner's wife, Dr. Magdalena Retsagi Berenyi, testified in support of her own petition for naturalization which was heard jointly with that of the petitioner and which was granted. She came from a well-to-do family whose business and property had been confiscated by the Communist government (R. 114, 115). Indeed her mother, father and two younger sisters had left Hungary in 1948 and came to the United States to escape the Communist regime (R. 112). They were permitted to leave because her father was a Czech citizen and travelled on a Czechoslovakian passport and his wife and children under eighteen were permitted to accompany him (R. 113, 118). Magdalena Berenyi also applied for an exit permit but was refused because she was over eighteen years of age (R. 113). She described the hatred which both she and her husband had for Communism and the Communist government of Hungary and their constant desire to leave the country and achieve freedom (R. 114, 120).

A further witness for the petitioner was Lorand De Bickish, a former Hungarian national who was a naturalized citizen of the United States and was a project engineer residing in Newton, Massachusetts (R. 130, 139). Mr. De

Bickish was an avowed anti-communist who had been arrested twice (R. 133, 134) and imprisoned on one occasion for six months for attempting to escape from Hungary in 1948. Also, his brother was a broadcaster for Radio Free-Europe in Munich and in 1955 he was exiled for four months to a small town in eastern Hungary because he maintained contact with his said brother (R. 135). During that exile, the petitioner and his wife were the only persons who visited him (R. 135). They also were the godparents of his child (R. 136). He first met the petitioner in 1950, having previously been a friend of petitioner's wife (R. 136, 137). He described how he and the petitioner often discussed politics and the petitioner always voiced views opposing Communism and the Hungarian government (R. 137, 138). They used to listen clandestinely to Radio Free Europe, the Voice of America and B. B. C. together, which was forbidden by the government (R. 137). On many occasions they talked together of leaving Hungary and escaping to freedom (R. 138).

Another witness for the petitioner was Dr. Ilona Raditz Ring, resident pathologist at Temple University, who was also a former Hungarian national and had become a naturalized United States citizen (R. 77, 84). She was formerly a student at the University of Budapest Medical School, having been two years senior therein to the petitioner and his wife, and having graduated therefrom in 1950 (R. 78, 79). Following her graduation, she had been a faculty member at the medical school (R. 83). She testified that from about 1949 or 1950 on, she saw petitioner about once a month and had occasion to discuss with him the political problems of the country (R. 79, 80). The peti-

tioner often expressed his opposition to Communism to her and his desire to leave Hungary and go to a free country (R. 81-83). In the United States, petitioner had often expressed his happiness and gratitude at being here (R. 84, 85).

Mrs. Charlotte Ray, the mother-in-law of petitioner testified that she had left Hungary in 1948 together with her husband and two younger daughters and had become a naturalized United States citizen in 1954 (R. 143). Her husband had a large textile manufacturing business which had been nationalized by the Hungarian government without compensation. She had every reason to be and was bitterly opposed to Communism (R. 144, 145). She first met the petitioner in December of 1956 when he came to this country as her oldest daughter's husband (R. 146). Since that time, the petitioner had on many occasions in her presence expressed his hatred for Communism and his love for this country and the freedom which it offered (R. 147).

Paulette Farkas, a naturalized United States citizen, who was the aunt of Magdalena Berenyi, testified that she had lived in the same apartment in Budapest with the petitioner and his wife following their marriage in 1952 until they left the country in 1956 (R. 148, 149). She and her husband escaped into Austria together with the petitioner and his wife (R. 149). She knew the petitioner since 1950, and between that time and their exit from the country, she had on numerous occasions discussed the political conditions that existed. Petitioner always expressed his opposition to Communism and his desire for freedom (R. 149, 150).

The testimony of the last witness for the petitioner, Harry Flam, a brother-in-law, was stipulated to between counsel to the effect that he would testify that petitioner was of good moral character, opposed to Communism and attached to the principles of the constitution (R. 151).

2. The Adverse Testimony

The government produced two witnesses whose testimony was offered in opposition to the petition. The first government witness was Dr. Pal Halasz, a physician and surgeon, who resided in Peoria, Illinois. He had attended the University of Budapest Medical School between 1949 and 1955 and knew the petitioner therefrom (R. 12-13). The witness had himself been a member of the Communist party between 1948 and 1956 (R. 17, 18). While he was at the university, Communist party meetings were held about once a month, but he did not attend all of them (R. 18, 19). He testified that he saw the petitioner at some meetings in 1950 or 1951, and when asked to be specific, he stated at perhaps two or three meetings and indeed was not even certain it was more than one (R. 20, 31). He had no specific memory of what occurred at any meeting which petitioner attended (R. 32). He did not recall whether these meetings were open or closed (R. 32). Most of the time the Communists invited the attendance of students whom they wished to indoctrinate (R. 37). These visitors would not be identified as non-members (R. 37). When a person was invited to attend it was a must that he do so or risk dire consequences (R. 23-25). The petitioner was an outstanding student and the Communists would naturally have sought to recruit him (R. 30). He had never seen a party membership card of the petitioner though he had on occasions been the doorkeeper at meetings (R. 27, 31), nor had

he ever seen petitioner's name listed in any party records (R. 31), nor did he recall the petitioner ever speaking or voting at such meetings (R. 26, 27, 32). Indeed, Halasz testified that he did not know whether petitioner was or was not a member, but merely assumed that he was because he saw him at meetings (R. 35). He knew, in fact, that petitioner was actually opposed to Communism and had heard him speak against the Communist party and the regime (R. 34, 35).

The second government witness was Dr. Gyorgy Kury, a physician residing in Brookline, Massachusetts (R. 38). He had attended medical school at the University of Budapest commencing in the same class with petitioner in 1946, but during the first two years had no contact with him (R. 39, 44, 45, 46, 47). In September of 1948, he was assigned to a small study group of about twenty students which met every afternoon (R. 52, 53). The purpose for these groups was the study of medical subjects and also political orientation (R. 48, 53). The witness attended only one meeting of a group wherein the petitioner was also a member before transferring to another group (R. 56). At this meeting in September of 1948, while the members told each other something of their respective backgrounds, the witness stated that he heard the petitioner tell the group that he was a member of the Communist party since 1945, following the Soviet occupation of the country, and that he was to be their instructor in Marxism-Leninism and was responsible for their ideological education (R. 42, 54). Petitioner also was said to have told the group to read Soviet books, see Soviet movies and discuss the news (R. 43, 54). Petitioner spoke for about five minutes on that occasion (R. 54). Dr. Kury never attended a meeting of this study group again,

having thereafter transferred to another group (R. 56). He did not remember the exact words used by petitioner on this occasion and did not remember the names of any other persons in the group (R. 54, 55). He had made no notes of this event (R. 53). Except for this one occasion he had never heard petitioner state that he was or had been a Communist (R. 56) and he had no close contact with the petitioner thereafter (R. 62-64).

In addition to the foregoing testimony certain documentary exhibits were entered into evidence which consisted mainly of the transcripts of prior testimony by the petitioner and the government witnesses taken before the Immigration and Naturalization Service. The testimony contained therein was in the main substantially the same as the trial testimony and added nothing of a consequential nature thereto.

C. District Court's Findings of Fact and Conclusions of Law

Based upon the above evidence, the District Court made certain specific findings of fact which were contained in its opinion dated March 29, 1965, which, although not separately numbered, were, insofar as herein pertinent, as follows:

1. That the petitioner became a member of the Communist party in Hungary in 1945.

2. That the petitioner remained a member of the Communist party for an indefinite number of years.

3. That the petitioner attended closed meetings of the Communist party.

4. That the petitioner was in charge of instruction in communist ideology and student study group meetings for an undetermined period of time.

Based upon the findings of these subordinate facts, the District Court found as ultimate facts that the petitioner knowingly testified falsely before the Immigration and Naturalization service on three occasions within the statutory period required for good moral character when he denied membership in the Communist party and was, therefore, not a person of good moral character within the meaning of the Immigration and Nationality Act.

As its conclusion of law, the District Court held that on the basis of the facts which it found, as hereinabove set forth, the petitioner had failed to establish that during the required statutory period he had been and still was a person of good moral character within the meaning of the Immigration and Nationality Act (R. 271-277).

D. Opinion of the Court of Appeals

The Court of Appeals affirmed the order of the District Court on the ground that the petitioner had failed to sustain his burden of proving that he possessed the statutory qualifications for naturalization, and more specifically the qualification of good moral character during the required statutory period. While the Court of Appeals conceded that the petitioner had made out a prima facie case of good moral character, it held that the District Court's belief of the adverse testimony satisfied the government's burden of going forward following the presentation of the prima facie case, and that the said Court was therefore justified in holding that the petitioner had failed to sustain his over-

all burden of proof. It concluded that in according due weight to the opportunity of the trial judge to observe the conduct and demeanor of the witnesses, it could not as a matter of law find the conclusion of the District Court to have been clearly erroneous within the meaning of Rule 52(a) of the Federal Rules of Civil Procedure (R. 303-308).

Summary of Argument

I

The District Court's finding that petitioner had been a member of the Communist Party was based solely upon an alleged extrajudicial oral admission which had been reputedly made more than sixteen years prior to the final hearing. The alleged statement did not take place at a Communist Party meeting or function. It was completely uncorroborated. There was no objective evidence of Party membership whatsoever. Other than the witness' testimony as to this one conversation of approximately five minutes duration, there was no other evidence upon which the District Court could have based such finding. The petitioner categorically denied that such conversation ever took place and offered numerous witnesses who testified unqualifiedly to his pronounced anti-Communist views throughout the years and who stated that to their knowledge he had never been a Communist. A second government witness testified that he had seen the petitioner at perhaps one, two or three Communist meetings but did not recall whether these meetings were open or closed. He stated that non-Communists at the medical school were often invited to attend such meetings and that an invitation was tantamount to an order, which if disobeyed, would result in dire consequences. This govern-

ment witness stated that in fact he knew the petitioner's views to be decidedly anti-Communist.

The District Court's finding of Communist Party membership was not based upon substantial evidence and was clearly erroneous. It chose to believe one minor portion of the evidence, which was of the weakest and least satisfactory nature, and ignored the overwhelming preponderance of credible evidence to the contrary. On the entire record, the District Court's finding did not reflect the truth or right of the case and evoked the firm conviction that a mistake was committed. *United States* v. *United States Gypsum Co., et al.*, 333 U.S. 364, 395.

II

Even assuming, arguendo, that some degree of membership had been shown, the evidence was insufficient to support a finding of Communist Party membership as to warrant a denial of naturalization.

The "meaningful association" test enunciated by this Court in *Rowoldt* v. *Perfetto*, 355 U.S. 115, and *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469, should be extended to naturalization proceedings. This Court has indicated that such test should be applied in all situations where a finding of membership would subject a person to severe penalties. A denial of naturalization, in the case at bar, is such a situation.

Further, this Court has already applied the "meaningful association" test in construing the meaning of "member" as used in the Immigration and Nationality Act of 1952, with respect to its deportation provisions. *Gastelum-Quinones* v. *Kennedy, supra.* The petitioner has applied for

naturalization under the same Act. It must be assumed that Congress intended "member" to have the same meaning when used in two almost identically worded provisions of the same statute.

ARGUMENT

I. The Court of Appeals erred in upholding the District Court's findings that petitioner was a member of the Communist Party in Hungary and had therefore testified falsely in denying membership.

A. The said finding of Communist Party membership was not supported by substantial evidence and was clearly erroneous.

It is apparent that in making the aforementioned findings of fact and the resultant conclusion, the District Court did so solely on the basis of the testimony of the witness Kury.

Kury's testimony, in turn, is founded solely upon an alleged oral admission purportedly made by the petitioner on a single occasion of five minutes duration more than sixteen years prior to the final hearing herein.

There is absolutely no corroboration of Kury's testimony in this regard whatsoever. There is similarly no other testimony or evidence at all which in any respect would tend to prove petitioner's membership in the Communist party or participation in activities in furtherance of the Communist cause.

It is the petitioner's contention that the testimony of Kury, standing alone, is palpably inadequate as a proper

basis for the court's findings. Wigmore recognizes the weakness inherent in such testimony and comments thereon as follows:

> " . . . (5) There is no fixed rule that in civil cases generally an opponent's extrajudicial admission is insufficient, without other evidence, as the foundation of a verdict for one or more facts. But when the admission concerns the main controverted fact in the case, and the opponent's admission is the only evidence offered, a few Courts show an inclination to follow a general maxim that it is insufficient—at least when the admission is one of conduct only." *Wigmore on Evidence,* Third Edition, Volume IV § 1055.
>
> "Weight of Admissions. Except in the foregoing instances there are no specific rules which place a handicap on the use of a party's admissions. But there is a general distrust of testimony reporting any extrajudicial oral statements alleged to have been made, including a party's admissions," *Wigmore on Evidence,* Third Edition, Volume IV § 1056.

The weakness of such testimony is obvious. It is subject to every human frailty and failing imaginable. To remember and narrate accurately the statements of another after a lapse of sixteen years is, at best, most difficult. The narrator may be thoroughly honest in his belief that he has given the exact substance of the alleged admission and yet be mistaken. An unintentional transposition of a word or words in the narration, may give a meaning to it which is completely different from that which was intended. A listener is liable to misunderstand or to forget (particularly after sixteen years) what was really said or intended by the person making the statement, or to relate it incorrectly. A single word, misunderstood or not heard, or even a look

or a gesture, may produce upon the witness' mind a meaning totally different from that which the declarant intended to convey. Indeed, the declarant himself, may through inarticulateness or any other shortcoming of his own, not have expressed his true meaning. See *Gangi* v. *Fradus*, 227 N.Y. 452; *Flora* v. *Anderson*, 75 F. 217; *Langston* v. *Currie*, 95 Mont. 57.

Indeed, such testimony, standing alone, is legally insufficient to support a verdict in several types of actions including criminal cases and divorce actions.

Of course, the insidious effect of such testimony lies in the fact that it can never be conclusively countered or disproved. It can only be denied, which petitioner has done herein consistently and without qualification. In effect, it places the petitioner in the position of having to prove a negative proposition which is extremely difficult, if not impossible.

However, there is a statutory right in an alien to submit a petition for naturalization and evidence to a Court, to have the tribunal pass upon same, and if the requisite facts are established to receive his certificate of naturalization. In passing upon the application, the Court exercises a judicial judgment, it does not confer or withhold a favor. *Tutun* v. *United States*, 270 U.S. 568, 576; *Stasiukevich* v. *Nicolls*, 168 F. 2nd 474.

While the burden of proving the required elements for naturalization rests upon the petitioner, he makes out his prima facie case by his sworn petition and the affidavits of his witnesses. *Krausse* v. *United States*, 194 F. 2nd 440.

In the case of *Klig* v. *United States,* 296 F. 2nd 343 the Court reversed an order of the District Court which had denied naturalization on the ground that petitioner had testified falsely concerning his Communist party activities twenty to twenty-five years earlier, and, thus, was not a person of good moral character. The petitioner therein had testified that he had terminated his connections with the Communist party of Canada in 1932. Two government witnesses testified to his presence at four Communist party functions, including closed meetings of the party, between 1932 and 1938. Though Klig denied such allegations, the District Court chose to believe the government's testimony and made its findings as above set forth.

In reversing and remanding for a new hearing, the Court of Appeals stated as follows on page 346:

> "But in the context of this case whether appellant was present at the communist party functions between 1934 and 1938 which the District Court found he had attended, is too insignificant to furnish an adequate basis for it to have found that petitioner intended to testify falsely to obtain a benefit under the Act. Without more, these misstatements, if misstatements they were, concerning these olden affairs do not evince a lack of good moral character required by the statute."

In *Stasiukevich* v. *Nicolls, supra,* one Apelman, an immigration inspector, testified that he had made an investigation of the petitioner and had spoken with fifteen or twenty persons in his home community. In response to a question put to him on direct examination as to petitioner's reputation in the community, Apelman answered, "His reputation in the community is of being a Communist."

In reversing the District Court's denial of the petition, the Court stated as follows at 168 F. 2nd 479:

> "A finding that Stasiukevich was a communist would have clearly been erroneous on this record. Membership in the communist party cannot be proved by Apelman's testimony concerning what he was told by fifteen or twenty persons in Maynard to the effect that Stasiukevich's reputation was that of being a communist."

In the case of *In re Sittler's Petition,* 197 F. Supp. 278, affirmed *Sittler* v. *United States,* 316 F. 2nd 312, the issue was one of attachment to the principles of the constitution. The petitioner had been a commentator for the nazi government during the second world war. Four witnesses testified for the government before the designated naturalization Examiner. A newspaper reporter testified that petitioner had stated in an interview that he could not condemn Hitler. Three other witnesses testified that at various times in 1948 petitioner had made anti-American, anti-Semitic and pro-German remarks. While the District Court denied naturalization based upon other evidence, it made the following comments with respect to the sufficiency of the testimony of the witnesses hereinabove mentioned, at page 280:

> ". . . but the content of the testimony of four government witnesses respecting the post war period is too fragmentary, indefinite and remote to stand alone as a sufficient basis for denying the petition."

It is respectfully submitted that the testimony of a single witness as to the one extrajudicial statement purportedly made more than sixteen years ago, standing alone, is equally insufficient to justify the Court's findings in the

case at bar. This is particularly so in view of the petitioner's vehement denials thereof and the overwhelming corroboration of his anti-Communism offered by his witnesses and the government witness Halasz.

Indeed, all that the petitioner could possibly do to counter the testimony of Kury was to present to the Court through such witnesses as were available, a complete and candid picture of his background and history. Such testimony and the facts elicited therein place grave doubts upon the accuracy of Kury's allegation. The entire tenor of the petitioner's personal life and associations militate against the inferences to be drawn from Kury's testimony. The petitioner's religious training, upbringing and observance to the present time are completely inconsistent with his ever having been a member of the Communist party. Indeed, in the year 1945 when petitioner is found by the Court to have joined the Communist party, he was a sixteen year old high school student who had no political involvement at all (R. 88). The testimony of the witness De Bickish, an avowed anti-Communist who suffered imprisonment and exile at the hands of the Hungarian regime, strongly supports the petitioner's testimony. The petitioner's participation in a religious marriage ceremony, and, indeed, his marriage to a wife whose family had been deprived of its livelihood by the Communists, is a further strong indication of the fact that he was not a Communist. Indeed, the wife's family who testified for the petitioner at the final hearing did and had every reason to detest Communism and Communists.

But perhaps the strongest testimony in the petitioner's favor was that which was given by the government's other witness, Halasz. Here was a man who was himself an ad-

mitted Communist and who knew the petitioner much more closely than did Kury. Halasz, however, could not truthfully state that the petitioner had ever been a member of the Communist party. The one, two or three meetings at which he saw petitioner in attendance, could very well have been open meetings to which petitioner had been invited and which, under the circumstances then existing in Hungary, he was compelled to attend. Indeed, Halasz stated that he knew the petitioner's actual views to be extremely anti-Communist.

Added to all of the factors is the complete absence of any objective evidence to prove the petitioner's membership in the Communist party. There was no testimony that he ever held a membership card therein, paid any party dues, voted at any party meetings, participated in any party discussions, nor was his name ever seen in any party records. Under all these circumstances, it is inconceivable that the District Court could have found that the petitioner was actually a member of the Communist party.

Indeed, even if the testimony of Kury were to be believed as against the weight of all of the other evidence, Kury's testimony would only prove that the petitioner made the statement attributed to him by the said witness. It would certainly, in no way, prove the truth of the content of the said statement. Further the meeting at which Kury claimed such statement to have been made was never even alleged to have been a Communist party meeting.

It is thus respectfully submitted that the District Court's finding that petitioner was a member of the Communist Party is totally lacking in the support of any substantial evidence.

Substantial evidence is more than a mere scintilla; it means such evidence as a reasonable mind might accept as adequate to support a conclusion. Uncorroborated hearsay or rumor do not constitute substantial evidence. *Consolidated Edison Co., et al.* v. *National Labor Relations Board, et al.*, 305 U.S. 197, 229; *United States* v. *Krumsiek*, 111 F. 2d 74.

Substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can be reasonably inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 F. 2d 985; *Sawkow* v. *Immigration and Naturalization Service*, 314 F. 2d 34.

In determining what constitutes substantial evidence, the court must consider the entire record. Substantial evidence means more than evidence which, considered by itself alone, would be sufficiently persuasive to induce the trier of the fact to give it the credence and weight essential to support findings. It must have those characteristics to such an extent that in the setting made by the entire record the trier may reasonably find in accordance with it after giving due consideration to whatever else is shown both in opposition or in accord. *Gooding* v. *Willard*, 209 F. 2d 913.

Considered in the context of the entire record herein, the government's evidence against the petitioner consisted of a single fragmentary, isolated, uncorroborated and remote instance of a purported admission that is completely inconsistent with the preponderance of evidence to the con-

trary. As an alleged extrajudicial statement standing alone, with respect to the main controverted fact in issue, it is the weakest possible type of evidence. Significantly, the District Court's opinion contained no findings which in any way questioned the credibility of the petitioner's witnesses. Indeed, it was on the basis of the very testimony of these same witnesses that the District Court granted naturalization to the petitioner's wife.

As an example of the nature and quantum of evidence which has been held insufficient to prove membership in the Communist Party, see *United States* v. *Bridges,* 133 F. Supp. 638. By comparison the government's evidence in the case at bar is infinitesimal.

It has been repeatedly held that an appellate court should reverse the findings of the district court where (1) the findings are without substantial evidence to support them; (2) the court misapprehended the effect of the evidence; and (3) if, though there is evidence which if credible would be substantial, the force and effect of the testimony considered as a whole convinces that the finding is so against the great preponderance of the credible testimony that it does not reflect or represent the truth and right of the case. *Sanders* v. *Leach,* 158 F. 2d 486; *United States* v. *Kaplan,* 277 F. 2d 405; *Simpson* v. *United States,* 322 F. 2d 688.

The District Court's findings in the case at bar would appear to fall squarely within the said rule. It should further be noted that some of the Court's subsidiary findings are literally unsupported by any evidence at all. The finding that petitioner attended closed meetings of the Communist Party is without any evidentiary support. Kury's testimony did not pertain to petitioner's attend-

ance at any Communist Party meetings, open or closed. Halasz definitely stated that he could not recall whether any meeting at which he saw petitioner was open or closed.

Similarly, the Court's finding that petitioner did not participate in the Hungarian uprising is not only without any evidentiary basis, but is directly contrary to the only testimony pertaining thereto. The petitioner, whose testimony in this respect was uncontroverted, stated that his division fought the Russians during the revolt and that he remained on duty as a medical officer treating the injured throughout. As a doctor and a medical officer he thus performed his duties in the capacity for which he was trained and in which he was skilled. The Court's finding of nonparticipation would thus appear to be completely baseless.

In addition, the Court's characterization of the length of petitioner's alleged membership in the Communist Party "for an indefinite number of years" and his alleged instructor status in Communist ideology "for an undetermined period of time" are equally without evidentiary support at all and indicative of the gossamer quality of the findings.

Of course, the application of the term "finding" to the District Court's ultimate conclusion of lack of good moral character, as set forth in the opinion, does not alter the fact that the said determination embodies a conclusion of law, nor alter the duty of the reviewing court to reach its own decision thereon and to reverse if it deems that conclusion erroneous. *Baumgartner* v. *United States,* 322 U.S. 665; *Lehman* v. *Acheson,* 206 F. 2d 592.

A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire

evidence is left with the definite and firm conviction that a mistake has been committed. *United States* v. *United States Gypsum Co., et al.,* 333 U.S. 364, 395. See also *Universal Camera Corp.* v. *Labor Board,* 340 U.S. 474.

Under the prevailing principles and authorities above cited, it is respectfully submitted that the District Court's finding of Communist Party membership was not based upon substantial evidence and, as such, was clearly erroneous. Similarly the Court of Appeals erred in upholding the said finding.

II. The Court of Appeals erred in upholding the District Court's finding of Communist Party membership in the complete absence of any evidence showing a "meaningful association" or indeed any degree of commitment to or involvement with the Party.

This Court has recognized a great practical and legal difference between those persons who knowingly join the Communist Party aware of its aims and purposes and those whose membership therein is intrinsically innocent or nominal. In furtherance of the recognition of this distinction, the Court has, under various circumstances, refused to inflict serious penalties upon such persons whose "membership" has not been shown to be of such a degree or nature as to amount to a "meaningful association" with the Party. *Rowoldt* v. *Perfetto,* 355 U.S. 115; *Gastelum-Quinones* v. *Kennedy,* 374 U.S. 469; *Niukkanen* v. *McAlexander,* 362 U.S. 390; *Scales* v. *United States,* 367 U.S. 203, 222.

It is recognized that the District Court's conclusion that the petitioner failed to establish good moral character was

technically based upon the finding that he had falsely denied membership in the Party and that, in this context, the nature or degree of his commitment may be said to be immaterial. However, as such finding of false testimony could not have been made without the underlying primary finding that petitioner had previously become a member of the Communist Party, it is this latter determination of fact which, in effect, inevitably dictated the denial of naturalization. It is thus the finding of such membership which is the very core of this case.

The opinion of the Court of Appeals in this case conceded that the petitioner had made out a prima facie case for naturalization upon the final hearing in the District Court and that the burden of going forward with countervailing evidence thereupon shifted to the government. *Berenyi* v. *District Director*, 352 F. 2d 71, 73. Having thus recognized the government's evidentiary burden, however, it would appear that the court below completely failed to apply any of the criteria enunciated in the above cited decisions of this Court to the evidence which the government did introduce with respect to the petitioner's Communist Party membership. Instead, the court merely stated that the trial court's "belief of the evidence that the petitioner had been a Communist adequately satisfied that burden." In view of the de minimus nature of the evidence of such membership which was adduced, it would appear that the Court of Appeals completely failed to consider the nature and quality of such evidence. Certainly, a comparison of the nature and quality of the membership evidence in the case at bar, with the evidence which existed in *Rowoldt*, *Gastelum-Quinones* or *Galvan* v. *Press*, 347 U.S. 522, leads inescapably to this conclusion. It is respectfully submitted

that the failure to apply the standards required under the above cited cases to evidence of Party membership in the case at bar constituted error.

It is further submitted that this Court's decisions in *Galvan, Rowoldt, Gastelum-Quinones* and *Niukkanen,* as well as the tenor of its pronouncements in other cases involving the meaning of the word "member" in a statute, have, in effect, indicated a minimal substantive standard for a finding of Communist Party membership in all situations wherein a person is subject to serious penalties upon a finding of such membership, regardless of the nature of the proceeding or the burden of proof involved therein. See dissenting opinion of Mr. Justice Douglas in *Killian* v. *United States,* 368 U.S. 231, 266, 267.

The denial of citizenship to an alien who, like petitioner, has fled the totalitarian regime of his native land and who now has no home or ties other than in the United States, is a grave and serious matter. Not only does it prevent the alien from joining fully in the affairs of his adopted land, but it also denies him the security which a citizen possesses against the possibility of the drastic measure of deportation, which can be the equivalent of banishment or exile. *Fong Haw Tan* v. *Phelan,* 333 U.S. 6, 10; *Delgadillo* v. *Carmichael,* 332 U.S. 388, 391.

Moreover, this Court has already had the occasion to construe the meaning of the word "member" as used in the deportation provisions of the Immigration and Nationality Act of 1952, the very statute under which the petitioner seeks naturalization in the case at bar. In *Gastelum-Quinones* v. *Kennedy, supra,* this Court extended the "meaningful association" doctrine to a finding of Commu-

nist Party membership under section 241(a)(6)(C) of the Act wherein such membership was made a ground for deportation. The language of section 241(a)(6)(C) is substantially identical to that of section 313(a)(2) of the Act which makes such membership a bar to naturalization. It would certainly not be logical to assume that Congress meant the same word ("member") to have different meanings when used in two almost identically worded sections of the same statute.[1] It is thus submitted that a finding of membership in the Communist Party as a bar to naturalization, must be based on evidence of "meaningful association", just as evidence of such association must be present to warrant the issuance of a deportation order. It is clear that no evidence of such an association existed in the case at bar.

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[1] The dissenting opinion in *Rowoldt* disputed the majority's reliance therein, upon the holding in *Galvan* that Congress, in 1951, by enacting an ameliotory amendment to the Internal Security Act of 1950, intended a benign construction upon the use of the word "member" in the said Act. The dissent pointed out that the legislative concern in enacting the amendment appeared to be solely with exclusion situations rather than with the deportation. It found support for this contention in the fact that when the Immigration and Nationality Act of 1952 repealed the 1951 amendment, its substance was reenacted with respect to exclusion but not with respect to deportation. 355 U.S. 115, 124, footnote.

It should be noted, however, that the substance of the said 1951 amendment was also enacted in the naturalization provisions of the Immigration and Nationality Act of 1952, as section 313(d) of the said Act.

CONCLUSION

The judgments below should be reversed with directions to enter judgment granting the petitioner's application for naturalization.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 66

KALMAN J. BERENYI, PETITIONER

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (R. 303–308) is reported at 352 F. 2d 71. The opinion of the district court (R. 271–277) is reported at 239 F. Supp. 725.

JURISDICTION

The judgment of the court of appeals (R. 308) was entered on November 1, 1965. The petition for a writ of certiorari was filed on January 28, 1966, and was granted on April 18, 1966 (R. 309; 384 U.S. 903). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

In applying for naturalization as a United States citizen, petitioner testified that he had never been a member of the Communist Party. His petition was denied on the ground that he had given false testimony which, under Section 101(f) of the Immigration and Nationality Act, precluded a finding that he was a person of good moral character. The questions presented are:

1. Whether the finding of the district court that petitioner gave false testimony was clearly erroneous.

2. Whether, if petitioner was a member of the Communist Party, the meaningfulness of his association is relevant to the truthfulness of his testimony.

STATUTES INVOLVED

Section 316(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1427(a), provides:

> No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred

to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Section 101(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(f) provides in pertinent part:

> For the purposes of this chapter—
>
> No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—
>
> * * * * *
>
> (6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

Section 335(b) of the Immigration and Nationality Act, 8 U.S.C. 1446(b), provides in pertinent part:

> The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. * * * The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 1421 of this title.

STATEMENT

On January 30, 1962, petitioner, a Hungarian national, filed a petition for naturalization in the United States District Court for the District of Massachusetts. In his application to file (R. 244) and in the course of preliminary examination pursuant to Sec-

tion 335(b) of the Immigration and Nationality Act (8 U.S.C. 1446(b); R. 252, 299), petitioner denied that, in the United States or any other place, he had been a member of, or in any way connected or associated with the Communist Party, either directly or indirectly. At the final hearing, before the district court, pursuant to Section 336 (8 U.S.C. 1447), the Attorney General appeared by counsel and urged that the petition be denied on the grounds (1) that petitioner had been a member of the Hungarian Communist Party during the preceding ten years, and was therefore ineligible for naturalization under Section 313 of the Act (8 U.S.C. 1424), and (2) that during the five-year period for which he was required to establish good moral character he had testified falsely in denying such membership in order to facilitate his naturalization, and was therefore ineligible for naturalization under Sections 101(f)(6) and 316(a) (8 U.S.C. 1101(f) and 1427(a)). Following the hearing, the district court denied the petition, finding that petitioner had testified falsely to facilitate his naturalization (R. 272–280). The court of appeals affirmed (R. 303–308).

1. At the final hearing the government called two witnesses and, with petitioner's express consent, introduced the record of the preliminary examination as authorized by Section 335(b) of the Act (8 U.S.C. 1446(b)) (R. 4, 7–12).[1]

[1] The papers introduced contained petitioner's application to file a petition for naturalization (R. 243–247), transcripts of the preliminary examinations of Dr. Pal Halasz on September 17, 1964 (R. 157–193), of Dr. Gyorgy Kury on August 21, 1964 (R. 194–233), and of petitioner on July 30, 1963 (R. 234–

The government's principal witness was Dr. Gyorgy Kury, a naturalized citizen of Hungarian birth who lived in Brookline, Massachusetts (R. 38, 195). Dr. Kury testified that he had attended the Budapest Medical University and that from 1946 to 1949 he had been in the same class as petitioner (R. 39, 44–45, 47, 51). During the first two school years Dr. Kury had no contact with petitioner (R. 46–47, 49). In September 1948, the beginning of the third year, the class was divided into small study groups of about twenty students each, primarily for the purpose of reviewing the medical subjects taught in the larger, formal courses (R. 41–42, 47–49, 52–54). Under the pervasive influence of the Communist Party (R. 45), the study groups were also required to discuss the principles of Marxism and Leninism (R. 43, 48, 56–57), and one student in each group served as a leader in ideological and political matters (R. 53). Dr. Kury attended one meeting of the study group to which petitioner belonged. At that meeting petitioner introduced himself as a member of the Communist Party and as the student responsible for the ideological education of the group (R. 42–43, 54). On both direct-examination (R. 42) and cross-examination (R. 54), Dr. Kury recalled that petitioner had said that he had joined the Party after the Soviet troops oc-

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241), transcripts of earlier, ex parte interrogations by INS officers of Dr. Halasz on July 9, 1959 (R. 264–271) and of Dr. Kury on April 14, 1959 (R. 255–263), and four sworn statements by petitioner dated May 22, 1962 (R. 248–254), February 19, 1962 (R. 298–299), January 13, 1959 (R. 291–298), and September 24, 1957 (R. 282–290).

cupied Hungary.[2] After that first meeting, Dr. Kury was transferred to another study group at his own request, and he had no further contact with the group attended by petitioner (R. 56, 57). About a year later he was arrested for attempting to leave Hungary without a passport, was sentenced to twelve months in jail, and was later readmitted to the medical school only after representing that his absence had been caused by illness (R. 59–61). His imprisonment, together with a later illness, placed Dr. Kury two years behind petitioner with whom he had no further contact (R. 61–64).

The other government witness was Dr. Pal Halasz, a naturalized citizen of Hungarian birth, living in Peoria, Illinois (R. 12–13, 159). Dr. Halasz testified that he had attended the Budapest Medical University between 1949 and 1955 (R. 13, 19, 21), and had there known petitioner who was an outstanding student and three years ahead of him (R. 21, 25–26). In 1948 Dr. Halasz joined the Communist Party in response to strong pressures; he remained a member until 1956 (R. 17–18, 21–22, 27). As a Party member, he was required to attend the Party meetings which took place at the medical school about once a month (R. 18–19, 37). Approximately 120 to 150 persons would be in attendance at such meetings (R. 28). Occasionally the meetings would be closed, with only Party members present (R. 30, 33, 37); at other times

[2] Dr. Kury had testified to the same effect at the preliminary hearing before a naturalization examiner (R. 197) and in a sworn ex parte statement to an Immigration Service examiner (R. 258–259).

the meetings would be open to invited non-members as well (R. 28, 31–33, 37). Strong pressures to attend were brought to bear on students with particularly good academic records (R. 24–25, 30, 37–38). Failure to attend could result in withdrawal of state financial support, expulsion from medical school, and possibly imprisonment (R. 24). At one or more of the Party meetings in 1950 or 1951, Dr. Halasz had observed petitioner in attendance (R. 19–20, 31). Dr. Halasz testified that he did not recall if these particular meetings were open or closed (R. 33). Although on a few occasions Dr. Halaz had been assigned to check that those attending a meeting were carrying their Party cards (R. 31), he had never seen a membership card for petitioner (R. 27, 30–31). Nevertheless, from having seen petitioner at meetings, Dr. Halasz had thought that petitioner was a Party member (R. 35). He testified that he did not in fact know whether petitioner was a member or whether he was a non-member who had been invited to attend (R. 33).[3]

[3] Dr. Halasz had testified concerning these meetings on two previous occasions. In 1959, during an ex parte interrogation by an INS officer, he was asked (R. 267–269):

"Q. Did you ever attend a meeting of the Party at which only Communist Party members were allowed?

"A. Yes.

"Q. Did Dr. Berenyi also attend some of these meetings restricted only to Party members?

"A. Yes.

"Q. How many of these meetings would you estimate both of you attended?

"A. Oh, almost every month, between 1951 and 1953 or 1954. To come to think of it, I believe he graduated about 1952 from medical school.

"Q. In other words, while you were both going to medical

He stated that he did not believe petitioner was a Communist at heart, even if he was a member (R. 35). Petitioner had occasionally helped Dr. Halasz with his medical studies (R. 21), in the course of which petitioner had made statements against the Party and the regime (R. 33–35).

2. Petitioner testified in his own behalf. He stated that he had never been a member of the Communist Party (R. 87–88, 90–92, 95), that he had never attended closed meetings of the Party (R. 92–93), that

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school, both you and he attended Communist Party functions at which only Communist Party members could be present?

"A. Yes.

* * * * * * *

"Q. Do you believe or do you have any basis for believing whether Mr. or Mrs. Berenyi were ever genuine Communist Party members from an ideological standpoint?

"A. I believe Mr. Berenyi was only a Communist Party member on paper. He was not a Communist as far as anything in his mind was concerned."

In 1964, at the preliminary examination, Dr. Halasz was questioned by the government attorney (R. 179–180):

"Q. Is it or is it not true that you know of any facts which would indicate that Dr. Kalman Berenyi was a member of the Communist Party?

"A. Yes, I know facts.

"Q. Will you state those facts for us?

"A. Well, as I was a member of the Communist Party I attended Communist Party meetings in the army unit. And when I was there I have seen him, not each time, but I have seen him in the Communist Party meeting. Whether he was a guest, which many times happens in the Communist Party to get him into the Communist Party because he was a leading student in the medical school, and they called him in as a guest or whether he was ever a member, I can't recall. But I have seen him on the meeting, that I can state."

* * * * * * *

he had never been the political leader in a study group (R. 106), and that he had never made any statement such as that attributed to him by Dr. Kury (R. 87–88). Petitioner stated that he had been born in Budapest on August 7, 1928 (R. 87). He was baptized a Roman Catholic, and was given a strict religious upbringing by his mother (R. 87–88). At the time the Soviet troops entered Budapest in 1945, he was a sixteen-year-old high school student living with his parents and was an altar boy for an order of Franciscan nuns (R. 88).

In September, 1946, petitioner entered the Budapest Medical University. The school was not then under Communist Party domination, although there were some Communist groups and organizations. Petitioner did not join any of these organizations (R. 89). By 1948, however, the Communists had taken over the university and were attempting to indoctrinate the students in Communist ideology (R. 93). They held meetings about once a month which were attended by non-Communists as well as Communists (R. 93–94). Attendance by non-Communists was supposedly voluntary, but failure to attend could entail "very serious consequences" (R. 94). Petitioner attended "quite a few" times. At these meetings, if the lecturer directed a question to petitioner, he would give a perfunctory answer since "nobody dared to withhold any answers." Petitioner did not otherwise participate actively at these meetings (R. 94).[4]

[4] In May 1962, when asked by an officer of the Immigration and Naturalization Service if he had ever attended any open Party meetings, petitioner answered (R. 252):

"In the medical school they were not meetings. The whole

In 1949, while still a student in the medical school, petitioner joined the Hungarian army as a member in the Army College of Medical Students, having been "more or less ordered" to do so (R. 95–96). It was not necessary to be a Communist to enter the army (R. 96). Thereafter, the army provided petitioner with free tuition, board, and medical books, which he needed to complete his education (R. 96–97). Upon his graduation in June 1952, he was commissioned as a medical officer with the rank of first lieutenant (R. 97–98). At about the same time he married Magdalena Retsagi, a classmate at the school whom he had first met in 1948 and whom he had begun seeing steadily in late 1949 or early 1950 (R. 89–98). The wedding ceremony was both civil and religious, although religious ceremonies were then frowned upon (R. 98).

Petitioner thereafter served in the army as a medical officer (R. 97). He stated that while in the army he attended indoctrination courses in Marxism-Leninism, but that these courses were required "just as marksmanship or strategy or tactics for every person in the army including medical officers" (R. 98–99).

At the time of the Hungarian uprising in October and November of 1956, petitioner was attached as a medical officer to an anti-aircraft division in Budapest (R. 100, 108). He was then a captain, having received an automatic promotion after three years' service (R. 97). Petitioner's unit, along with most other units

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school came together and talked about the Russian Revolution and I was there too. As years went by the meetings were held more open."

of the Hungarian army, turned against the Russian forces sent to suppress the rebellion (R. 108). Petitioner, although he did not bear arms, was engaged with the treatment of the wounded (R. 107–108). When the uprising was effectively crushed by Russian troops, he and his wife began to seek ways of leaving Hungary (R. 100). Shortly thereafter he and his wife successfully eluded the Russian guards and crossed the border into Austria (R. 101). A week later, they were flown to the United States (R. 102–103). Petitioner and his wife were admitted to permanent residence in the United States in December 1956 (R. 103). They have been continuously employed in various hospitals as interns, residents, and licensed physicians (R. 103–105). Both successfully passed their State board examinations in Massachusetts, Illinois, and Virginia (R. 104). In addition, petitioner had become a certified diplomate in anesthesiology. For some time prior to July 1964, he had been a senior instructor at the Tufts University Medical School. At the time of his hearing he was in private practice and testified that he was expecting an appointment to the staff of the Harvard Medical School (R. 105).

Petitioner's wife, Magdalena Retsagi Berenyi, whose petition for naturalization was pending before the court at the same time and was heard jointly with his, testified on his behalf as well as her own. She stated that she had never been a Communist (R. 112, 114, 123, 127), nor had her husband (R. 127). She testified that her father had been a wealthy, senior executive in a Hungarian textile manufacturing firm (R. 114), who had come to the United States with his

wife and youngest children in 1948 (R. 111–112, 118). As the witness was then over the age of eighteen, she was not permitted to accompany them (R. 112–113, 118). When the funds left for her by her father ran out in 1950, she joined the army in order to finance the remainder of her medical education (R. 111, 115). After the 1956 uprising had been suppressed, she and petitioner, together with her aunt and uncle, had fled to Austria (R. 118–120).

Four other witnesses were called by petitioner to testify to his opposition to Communism. Dr. Ilona Ring, a physician and naturalized citizen living in Philadelphia (R. 77–84), stated that she first met petitioner and his future wife in 1949 or 1950, and during the following two years saw them socially about once a month (R. 79–82, 86). On those occasions, and on subsequent occasions, they frequently discussed the country's political situation (R. 80–83). In those discussions petitioner never said that he was a member of the Communist Party (R. 81–82, 85) and "was very much against the Communist regime" (R. 81–83).

Lorand De Bickish, an engineer and naturalized citizen living in Massachusetts (R. 130, 139–140), testified that he first met petitioner about 1950 (R. 136), and thereafter saw petitioner socially at least once a week (R. 137–138). On most of these occasions they discussed politics (R. 137–138), and petitioner "always spoke very much against the Communist Government, the Communist Party, against the life in Hungary at that time" (R. 137–138).

Mrs. Paulette Farkas, the aunt of petitioner's wife, first met petitioner in 1950 (R. 149–150). She testified that petitioner never said anything in favor of Communism and frequently spoke of his dislike of the Communist regime and of his desire to leave the country (R. 150). Petitioner's mother-in-law testified that since coming to this country petitioner had expressed his dislike of Communism (R. 143–145).

3. From the foregoing testimony and the record of the preliminary examination, the district court concluded that the evidence was too meager to warrant a finding that petitioner continued to be a member of the Communist Party within the ten-year period immediately preceding the filing of the petition (R. 275), and that naturalization was, therefore, not barred by Section 313(c) of the Act. On the other hand, the court also concluded that petitioner had failed to establish that during the five-year period preceding the filing of the petition he had been a person of good moral character, as defined in Section 101(f)(6), and that the petition must therefore be denied under Section 316(a) (R. 277).[5] The court reached this conclusion because it found that in his "Application to File Petition for Naturalization" (R. 243–246) filed on January 30, 1962, and in statements to officers of the Immigration and Naturalization Service on February 2, 1962,[6] and May 22, 1962 (R. 248–254) petitioner, for the purpose of facilitating his

[5] Mrs. Berenyi's petition, which was before the court at the same hearing, was granted.

[6] The court apparently was referring to the statement of February 19, 1962 (R. 298–299).

naturalization, falsely swore that he had never been a member of the Communist Party, knowing that such statements were false (R. 275–276). In particular, the court found (R. 274–275) that petitioner became a member of the Communist Party in Hungary in 1945; that he remained a member of the Communist Party for an indefinite number of years; that he attended closed meetings of the Communist Party; that he was in charge of instruction in Communist ideology at student study group meetings for an undetermined period of time; that he entered the Hungarian army, which was then under Communist control, in 1949, and thereafter served as a medical officer; that he did not participate in the 1956 uprising against Russian domination, but, in the resulting confusion, fled with his wife and others into Austria. The court of appeals, in affirming the district court's order, stated that it had carefully reviewed the entire record and that, according due weight to the opportunity of the district court to observe the witnesses, it could not hold the district court's finding that petitioner had been a Communist to be clearly erroneous (R. 307–308).

ARGUMENT

INTRODUCTION AND SUMMARY

Under Section 316(a) of the Immigration and Nationality Act (8 U.S.C. 1427(a)), an alien who seeks naturalization as a United States citizen must establish, *inter alia,* that during the five years preceding the filing of his petition he has been "a person of good moral character." Under Section 101(f)(6) of the

Act (8 U.S.C. 1101(f)(6)), no person may be found to be a person of good moral character who, within that period, "has given false testimony for the purpose of obtaining any benefits" under the Act. Petitioner was denied naturalization because the district court found that he had given false testimony in repeatedly representing under oath that he had never been a member of the Communist Party of Hungary.[7]

Petitioner does not contend that Sections 316 and 101 are constitutionally defective or that he may not be obliged to answer truthfully questions concerning past relations with the Communist Party here or abroad. Nor does he deny that, as a petitioner for naturalization, he bore the burden of persuading the district court that he satisfied each of the conditions for naturalization, including that of good moral character. Petitioner makes only two contentions here: (1) that there was clear error in the finding of fact that he had given false testimony by denying Communist Party membership, and, in the alternative, (2) that, if he was a member of the Communist Party, his association was not shown to be sufficiently meaningful, as that term is used in *Rowoldt* v. *Perfetto*, 355 U.S. 115, and *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469.

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[7] Petitioner is not, of course, permanently barred from acquiring citizenship. Indeed, as the spouse of an American citizen, he can reapply for citizenship three years after his wife's naturalization, and must then prove that he was of good moral character only for that three-year period. Sec. 319 of the Immigration and Nationality Act, 8 U.S.C. 1430; 8 C.F.R. § 319.1.

Petitioner's attack on the sufficiency of the evidence supporting the finding that he was a member of the Communist Party is addressed to a narrow issue as to which there was sharply conflicting testimony. We urge below that the district court's resolution of that conflict should not be set aside by this Court. In reaching that conclusion we rely on two propositions. First, we show that the burden of persuasion (or the risk of non-persuasion) was borne by the petitioner, so that the district court's doubts, if any, as to which version of the facts was to be believed, were properly to be resolved in favor of the government. Secondly, we show that, where a trial judge has determined that some testimony merits more credence than other testimony, considerable weight is to be given to his opportunity to judge the credibility of the witnesses and that his choice between conflicting evidence cannot in itself constitute clear error. We also contend that, in view of the affirmance of the district court's findings by a unanimous court of appeals, this Court should adhere to its well established rule that, except in extraordinary cases, it will not upset findings of fact concurred in by two courts below.

Petitioner's alternative argument—that there was no showing that his membership in the Communist Party was sufficiently meaningful—is based on a misinterpretation of the basis for the denial of his petition. We show below that the petition here was not denied because of petitioner's past or present political affiliations; naturalization was withheld solely because petitioner was found to have given false testimony and was therefore not a person of good moral char-

acter. Since the only question was the truthfulness of petitioner's representations, the meaningfulness of his membership is quite beside the point.

I

THE FINDING OF THE DISTRICT COURT THAT PETITIONER HAD GIVEN FALSE TESTIMONY WAS NOT CLEARLY ERRONEOUS.

The district court's ultimate finding, that petitioner had given false testimony, followed inevitably from its subsidiary finding, that petitioner had been a member of the Communist Party. The latter finding in turn involved an assessment of the sharply conflicting testimony of Dr. Kury and petitioner, and an appraisal of the relative credibility of those two witnesses. The testimony of petitioner's friends and relatives to the effect that petitioner had at various times expressed his hostility to Communism was not really in conflict with the testimony of the government witnesses that petitioner was a Party member. The government's evidence tended to show that petitioner's membership was prompted by considerations of convenience and pragmatism in the coercive atmosphere of a Communist regime rather than by personal commitment and ideological conviction (see, *e.g.*, R. 189, 269). This view gains persuasiveness from the testimony of petitioner (R. 92–94, 253–254), as well as that of Dr. Kury and Dr. Halasz (R. 22, 24–25, 30, 171, 187, 191, 259), concerning the very substantial pressures in Hungary toward political conformity, the serious difficulties that could be created for those who overtly resisted such pressures, and the Party's special efforts to gain the adherence of outstanding

students like petitioner. It is in light of those pressures that one can understand the testimony of Dr. Halasz, who was clearly trying to be as circumspect as possible, that he had considered petitioner to be a fellow Party member, even though not a communist at heart (R. 35, 183–185, 189, 266, 269–270).

Since nothing in the government's evidence was patently incredible, the district court could not avoid a choice between the conflicting versions of the critical fact. Because petitioner bore the burden of persuasion, and because substantial weight is to be given to the opportunity of the trial court to judge the credibility of the witnesses, we believe that the court's resolution of the conflict, affirmed by a unanimous court of appeals, should not be set aside in this Court.

It is well established, and we do not understand petitioner to deny (see Br. 20), that a person seeking naturalization bears the burden of proving that he meets all of the statutory conditions for the grant of citizenship. As Mr. Justice Brandeis wrote for the Court in *Tutun* v. *United States,* 270 U.S. 568, 578:

> The applicant for citizenship, like other suitors who institute proceedings in a court of justice to secure the determination of an asserted right, must allege in his petition the fulfilment of all conditions upon the existence of which the alleged right is made dependent; and he must establish these allegations by competent evidence to the satisfaction of the court. * * *

In this respect, naturalization proceedings are of course to be distinguished from denaturalization and deportation proceedings in which the government bears the burden of proof. Where the initial grant of

citizenship is sought, this Court has repeatedly said, doubts "should be resolved in favor of the United States and against the claimant." *United States* v. *Manzi*, 276 U.S. 463, 467; *United States* v. *Schwimmer*, 279 U.S. 644, 649–650; *United States* v. *MacIntosh*, 283 U.S. 605, 626. See also *Taylor* v. *United States*, 231 F. 2d 856 (C.A. 5); *Brukiewicz* v. *Savoretti*, 211 F. 2d 541 (C.A. 5); *Stevens* v. *United States*, 190 F. 2d 880, 883 (C.A. 7); *Molsen* v. *Young*, 182 F. 2d 480, 482 (C.A. 5), reversed on other grounds, 340 U.S. 880; *United States* v. *Harbanuk*, 62 F. 2d 759 (C.A. 2); *In re Nybo*, 42 F. 2d 727 (C.A. 6); *In re Sittler's Petition*, 197 F. Supp. 278, 286–287 (S.D. N.Y.), affirmed, 316 F. 2d 312 (C.A. 2) certiorari denied, 376 U.S. 932; *Petition of Reginelli*, 20 N.J. 266, 119 A. 2d 454, certiorari denied, 351 U.S. 918.

As the court of appeals recognized (R. 307), petitioner's sworn application made out a *prima facie* case that he was in compliance with the requirements for naturalization. That *prima facie* case shifted to the government the burden of going forward with the evidence. The government in turn met its burden with testimony which cast petitioner's truthfulness into doubt. But while the burden of producing evidence was thus shifted, the burden of persuasion (or the risk of nonpersuasion) did not shift. See McCormick, *Evidence* (1954) Section 307. When both sides rested, that burden or risk rested on petitioner. Therefore, if the fact-finder was persuaded by the government's evidence, or if his mind was in doubt, he was obliged to deny the petition.

The trial court had before it not only the record of the preliminary examination but also the live testimony of all of the witnesses. Indeed, petitioner's counsel insisted that the government present its testimony in open court and not rely on the administrative record (R. 13–15). Moreover, the district court expressly disclaimed any reliance on the summary of the preliminary examination or the findings of fact, conclusions of law, and recommendations of the examiner (R. 274). Thus, unlike many naturalization proceedings in which all the evidence is documentary, neither the court of appeals nor this Court stand "in the same position as did the district judge in passing upon whether the petitioner carried his burden of proof." *Krausse* v. *United States,* 194 F. 2d 440, 441 (C.A. 2). In these circumstances, the mandate of the Federal Rules of Civil Procedure applies with fullest force: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses" (Rule 52(a)).

"On the basis of a careful review of the entire record" (R. 307), the court of appeals could not find the clear error requisite for reversal (R. 308). Nor would such a finding be warranted on the record under this Court's characterizations of the "clearly erroneous" standard. Surely the record of conflicting testimony in this case does not produce "the definite and firm conviction that a mistake has been committed." *United States* v. *Gypsum Co.,* 333 U.S. 364, 395. And if it were supposed that "the evidence would support a conclusion either way," the trial

court's "choice between two permissible views of the weight of evidence is not 'clearly erroneous.'" *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 342.

Finally, petitioner's invocation of the "clearly erroneous" rule here must be considered in light of the Court's repeated pronouncement that it "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275. The evidence in this case has now been reviewed by two courts and four judges. However closely balanced the evidence might be thought, surely no "obvious and exceptional showing of error" has been made. Moreover, no right of constitutional dimension has been claimed. Compare *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377, 403–404. We believe, therefore, that the Court should adhere to the "seasoned and wise rule * * * [that] makes concurrent findings of two courts below final here in the absence of very exceptional showing of error." *Comstock* v. *Group of Investors*, 335 U.S. 211, 214.

II

THE MEANINGFULNESS OF PETITIONER'S ASSOCIATION WITH THE COMMUNIST PARTY IS NOT RELEVANT TO THE TRUTHFULNESS OF HIS TESTIMONY

Petitioner contends (Br. 28–31) that even if he was a member of the Communist Party, the denial of his petition must be reversed because his membership was not shown to be sufficiently meaningful, as that term is used in *Rowoldt* v. *Perfetto*, 355 U.S. 115, and

Gastelum-Quinones v. *Kennedy*, 374 U.S. 469. This argument obscures the basis of the decision below. The conclusion that petitioner failed to establish the "good moral character" required under Section 316 of the Act was not based on any finding as to his past or present ideological convictions or political activities; it was based on the finding that he had testified falsely. While there might be merit in petitioner's argument had his petition been denied under Section 313, which bars the naturalization of persons who have been members of the Communist Party within the preceding ten years unless it is shown that such membership was involuntary,[8] it is quite clear that the petition was denied under Sections 101(f)(6) and 316(a), which bar the naturalization of anyone giving false testimony for the purpose of obtaining any benefits under the Act. Indeed, in light of the district court's finding that the evidence did not show that petitioner had been a member of the Communist Party within the preceding ten years (R. 275), nothing in the Act would have precluded the grant of the petition had he testified truthfully. Thus, while *Rowoldt, supra,* and *Gastelum-Quinones, supra,* involved the deportation of aliens by reason of their conceivably hostile political attachments, this case in-

[8] Section 313(d) exempts those who show "* * * that such membership or affiliation is or was involuntary, or occurred and terminated prior to the attainment by such alien of the age of sixteen years, or that such membership or affiliation is or was by operation of law, or was for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes."

volves the denial of naturalization to an alien solely by reason of his lack of truthfulness.

Petitioner was asked whether, "in the United States or in any other place, [he had] been a member of, or in any other way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person" (R. 244). He answered that question in the negative (R. 244; see also 252, 299). Petitioner is a highly intelligent and highly educated person (R. 26). He does not, and could not readily, contend that even a nominal or involuntary membership did not require an affirmative answer. He does not suggest that the question is one which may not properly be put, nor that Congress may not insist on truthful answers from those who seek citizenship. See Section 101 (f)(6). In all events, "[w]hen one undertakes to cheat the Government or to mislead its officers, * * * by false statements, he has no standing to assert that the operations of the Government in which the effort to cheat or mislead is made are without constitutional sanction." *Kay* v. *United States,* 303 U.S. 1, 6; *Dennis* v. *United States,* 384 U.S. 855, 864–867. In sum, since neither the congressional insistence on truthful representations nor the denial of the petition turn on the political implications of "the dominating impulse to [petitioner's] 'affiliation' with the Communist Party" (*Rowoldt, supra,* at 120), the "meaningful association" standard has no bearing in this case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 66

KALMAN J. BERENYI,

Petitioner,

—v.—

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR PETITIONER

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DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE.

REPLY BRIEF FOR PETITIONER

I. The "concurrent findings" rule does not preclude review by this Court of the findings below.

The government contends (Br. 21) that the "concurrent findings" rule should preclude this Court's review of the findings of fact below.

In *Baumgartner* v. *United States*, 322 U.S. 665, a denaturalization case, the Court held that the said ruling did not bar review of a finding of petitioner's lack of allegiance at the time of his naturalization, which was the basis of the ultimate finding of petitioner's fraud in the naturalization proceedings.

In reversing the judgment below in the face of the concurrent findings of both lower courts, the Court stated in

language that is particularly appropriate in the instant case, as follows, at pages 670 and 671:

> "But the rule does not relieve us of the task of examining the foundation for findings in a particular case . . .
>
> "The phrase 'finding of fact' may be a summary characterization of complicated factors of varying significance for judgment. Such a 'finding of fact' may be the ultimate judgment on a mass of details involving not merely an assessment of the trustworthiness of witnesses but other appropriate inferences that may be drawn from living testimony which elude print. The conclusiveness of a 'finding of fact' depends on the nature of the materials on which the finding is based. The finding even of a so-called 'subsidiary fact' may be a more or less difficult process varying according to the simplicity or sublety of the type of 'fact' in controversy. Finding so-called ultimate 'facts' more clearly implies the application of standards of law. And so the 'finding of fact' even if made by two courts may go beyond the determination that should not be set aside here. Though labelled 'finding of fact', it may involve the very basis on which judgment of fallible evidence is to be made. Thus the conclusion that may appropriately be drawn from the whole mass of evidence is not always the ascertainment of the kind of 'fact' that precludes consideration by this Court . . .
>
> "Particularly is this so where a decision here for review cannot escape broadly social judgments—judgments lying close to opinion regarding the whole nature of our Government and the duties and immunities of citizenship. Deference properly due to the findings of a lower court does not preclude the review here of such judgments."

In the context of the entire record, the finding of Communist Party membership in the case at bar without question constituted an ultimate judgment which involved far more than a mere assessment of the credibility of witnesses. Whether labelled a subsidiary or ultimate fact, the finding of membership involved the "application of standards of law" and as such "went beyond the determination that should not be set aside here."

In *Chaunt* v. *United States*, 364 U.S. 350, the Court again reviewed concurrent findings of both lower courts in a denaturalization case and in reversing the judgment below stated as follows, at page 353:

> "The issue in these cases is so important to the liberty of the citizen that the weight normally given concurrent findings of two lower courts does not preclude consideration here, for we deal with 'judgments lying close to opinion regarding the whole nature of our Government and the duties and immunities of citizenship'."

While the burden of proof in a denaturalization proceeding is concededly different from that in an application for naturalization, the resulting position of grave uncertainty in which the person who is without citizenship is placed as a result of either proceeding, is similar in both cases. See *Fong Haw Tan* v. *Phelan*, 333 U.S. 6, 10; *Delgadillo* v. *Carmichael*, 332 U.S. 388, 391.

Basic considerations of individual liberty and human fulfillment are involved herein. Upon the granting or denial of the petition depends the petitioner's very status and the most important civil and political rights. If denied, he continues to be an alien; he cannot exercise the rights

of citizenship; he is deprived of the protections incident to citizenship. He cannot vote or participate in the affairs of government and in many states he is not permitted to be employed in public works or engage in various businesses or professions as to which citizenship is an essential qualification. He is subject to a multitude of inconveniences and discriminatory regulations. In short, a denial of naturalization deprives the petitioner of the most precious right which an inhabitant of the United States can possibly possess.

Nor should the "concurrent findings" rule bar review of a finding of Communist Party membership when considered in light of this Court's pronouncements in *Rowoldt* and *Gastelum-Quinones*. Certainly, the import of a finding of such membership in present times with the social, political and economic stigma that it carries, is most serious. Particularly is this so where petitioner categorically denies such membership and is unquestionably a person who would otherwise be a valuable member of the citizenry of this country.

The government implies (Br. 15, footnote) that the prejudice resulting to the petitioner from the denial of naturalization herein is not too severe inasmuch as he can reapply for citizenship in three years as the spouse of an American citizen and will then have to prove merely that he was a person of good moral character only for that three year period. Under the existing law, however, he would again he required to answer questions as to past Communist Party membership at such subsequent time, and unless he confesses that he has lied in the instant proceeding, which

he steadfastly denies, the result would again be the same. Under such circumstances, the ability to reapply for naturalization in the future is illusory and meaningless.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1966.

Kalman J. Berenyi, Petitioner, v. District Director, Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the First Circuit.

[January 23, 1967.]

Mr. Justice Stewart delivered the opinion of the Court.

A provision of the Immigration and Nationality Act requires that an alien who applies for naturalization as a United States citizen must establish that during the five years preceding the filing of his petition he has been "a person of good moral character." [1] Another provision specifies that no applicant may be found to be a person of good moral character who, within that period, "has given false testimony for the purpose of obtaining any

[1] Section 316 (a) of the Immigration and Nationality Act of 1952, 66 Stat. 242, 8 U. S. C. § 1427 (a), provides:

"No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

benefits" under the Act.[2] The petitioner, an alien who entered this country from Hungary in 1956, filed a petition for naturalization in the United States District Court for the District of Massachusetts in 1962. At the final hearing the Attorney General appeared by counsel in opposition to the petition.[3] Following this hearing the District Judge denied the petition, finding that the petitioner had testified falsely to facilitate his naturalization, and therefore could not, under the law, be found to be a person of good moral character within the statutory period.[4] The Court of Appeals affirmed,[5] and we granted certiorari.[6]

During the preparation of his application to file a petition for naturalization, the petitioner was asked the following question: "Have you ever, in the United States or in any other place, (a) been a member of, or in any way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person?" The petitioner, under oath, answered "No." On two subsequent occasions during the preliminary proceedings on his petition for naturalization, the petitioner again swore that he had never been a member of the Communist Party.

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[2] Section 101 (f), 66 Stat. 166, 172, 8 U. S. C. § 1101 (f):

"For the purposes of this Act—No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was— . . . (6) one who has given false testimony for the purpose of obtaining any benefits under this Act . . . ."

[3] Such an appearance is authorized by § 336 (d) of the Act, 66 Stat. 257, 8 U. S. C. § 1447 (d).

[4] 239 F. Supp. 725.

[5] 352 F. 2d 71. The Court of Appeals referred to Rule 52, Fed. Rules Civ. Proc., which provides in relevant part:

"Findings by the Court. (a) Effect. . . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses."

[6] 384 U. S. 903.

At the final hearing before the District Judge, the Government produced two witnesses whose testimony indicated that the petitioner had been a member of the Communist Party in Hungary. Dr. Pal Halasz stated that he had known the petitioner when they were both students at the University of Budapest Medical School and had seen the petitioner attend Communist Party meetings there on one or more occasions. While such meetings were sometimes open to persons who were not Party members, and Dr. Halasz was not sure that the petitioner was a Party member, his attendance at Party meetings gave Dr. Halasz the impression that the petitioner was a member. Dr. Gyorgy Kury related that he had attended a study group at the University in September 1948. These groups met to discuss Marxist-Leninist ideology, and students were required to attend regardless of Party membership. One student in each group was responsible for leading this discussion. Dr. Kury testified that, at the meeting in question, the petitioner introduced himself as a member of the Communist Party and the student leader responsible for the group's ideological education. Dr. Kury further testified that the petitioner had told the group that he had become a member of the Communist Party after Soviet troops had occupied Hungary in 1945.

The petitioner testified that he had never been a Party member or the ideological leader of any student discussion group. He related the heavy pressures on students at the University to attend Party functions and become members, and admitted that these pressures had led him to attend some open Party meetings as a nonmember, but added that he had not been an active participant at these meetings. The petitioner also emphasized his religious upbringing and other factors in his personal life which, he contended, made it unlikely that he would become a Party member. The petitioner's wife testified that he had never been a Party member, and four other witnesses

stated that, while in Hungary and after his arrival in the United States, the petitioner had expressed his strong opposition to the Communist Party and the Communist regime in Hungary.

Basing his decision solely on his own evaluation of the testimony adduced at this hearing,[7] the District Judge concluded that the petitioner had become a Party member in 1945 and had remained a member for an indefinite number of years, that the petitioner had attended meetings of the Party, and that he had instructed student study groups in Communist ideology. Accordingly, the court concluded that the petitioner had testified falsely in the preliminary naturalization proceedings, and denied his application for citizenship on the ground that he was, therefore, "not a person of good moral character within the meaning of the Immigration and Nationality Act."[8]

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[7] A preliminary examination on the petitioner's application for citizenship was held before a naturalization examiner, who transmitted his findings and recommendations to the District Judge, all pursuant to § 335 of the Act, 66 Stat. 255, 8 U. S. C. § 1446. But at the final hearing before the District Court, the judge heard testimony and conducted an independent hearing in accordance with § 336 (b) of the Act, 66 Stat. 257, 8 U. S. C. § 1447 (b), and explicitly declined to rely on any of the preliminary examination materials in reaching his conclusion. 239 F. Supp., at 727.

[8] At the same time, the judge found the evidence too weak to establish the Government's alternative contention that the petitioner's application should be denied because he had been a Party member within 10 years preceding his application for citizenship in 1962, and thus came within § 313 of the Act, 66 Stat. 240, 8 U. S. C. § 1424, which provides in relevant part:

"(a) . . . no person shall hereafter be naturalized as a citizen of the United States—

. . . . .

"(2) who is a member of or affiliated with . . . (D) the Communist or other totalitarian party . . . of any foreign state . . . .

. . . . .

"(c) The provisions of this section shall be applicable to any applicant for naturalization who at any time within a period of ten years

The petitioner asks us to reject as "clearly erroneous" the factual conclusion about his Party membership reached by the District Judge and accepted by the Court of Appeals. In order to do so, we would be forced to disregard this Court's repeated pronouncements that it "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *E. g., Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U. S. 271, 275. For there was no "very obvious and exceptional" error in the conclusion of the two courts below that the petitioner had been a member of the Communist Party. The testimony of Dr. Kury gave a concrete basis for this conclusion, and that of Dr. Halasz lent it further evidentiary support. The conclusion of the courts below is not inconsistent with the possibility that the petitioner may have harbored a strong opposition to the Party which he bared to his friends. For the petitioner may have merely joined the Party as a nominal member in deference to the strong pressures which the Party exerted on students to become members, pressures which several witnesses, including the petitioner himself, recited in detail.

The policy underlying the "two-court" rule is obvious. This Court possesses no empirical expertise to set against the careful and reasonable conclusions of lower courts on purely factual issues. When, as here, resolution of the disputed factual issues turns largely on an assessment of the relative credibility of witnesses whose testimonial demeanor was observed only by the trial court, the rule has particular force. To be sure, this Court

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immediately preceding the filing of the petition for naturalization or after such filing and before taking the final oath of citizenship is, or has been found to be within any of the classes enumerated within this section, notwithstanding that at the time the petition is filed he may not be included within such classes."

has not hesitated to undertake independent examination of factual issues when constitutional claims may depend on their resolution. See, *e. g.*, *Napue* v. *Illinois*, 360 U. S. 264, 271–272; *Fiske* v. *Kansas*, 274 U. S. 380, 385–386. Cf. *Hoffa* v. *United States*, — U. S. —. But this exceptional doctrine has no application to the present case, for the petitioner makes no claim that any constitutional issues are involved here.

Different considerations do not govern merely because this is a naturalization case. When the Government seeks to strip a person of citizenship already acquired,[9] or deport a resident alien and send him from our shores,[10] it carries the heavy burden of proving its case by "clear, unequivocal, and convincing evidence." [11] But when an alien seeks to obtain the privileges and benefits of citizenship, the shoe is on the other foot. He is the moving party, affirmatively asking the Government to endow him with all the advantages of citizenship. Because that status, once granted, cannot lightly be taken away, the Government has a strong and legitimate interest in ensuring that only qualified persons are granted citizenship. For these reasons, it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts "should be resolved in favor

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[9] *Schneiderman* v. *United States*, 320 U. S. 118; *Nowak* v. *United States*, 356 U. S. 660; *Chaunt* v. *United States*, 364 U. S. 350.

[10] *Woodby* v. *Immigration and Naturalization Service*, — U. S. —.

[11] The Government has not sought to deport the petitioner because of his affiliations with the Communist Party, and to do so it would be required to prove by "clear, unequivocal, and convincing evidence," *Woodby* v. *Immigration and Naturalization Service*, — U. S. —, that the petitioner had been a Party member who was "meaningfully associated" with it, *Rowoldt* v. *Perfetto*, 355 U. S. 115; *Gastelum-Quinones* v. *Kennedy*, 374 U. S. 469. The Government's evidence in this case fell clearly short of such a showing. Cf. note 8, *supra*.

of the United States and against the claimant." *E. g., United States* v. *MacIntosh,* 283 U. S. 605, 626.

The petitioner points out that in deportation cases this Court has held that an alien may not be expelled from this country on the ground that he has been a member of the Communist Party unless his participation in the Party amounted to "meaningful association." *Rowoldt* v. *Perfetto,* 355 U. S. 115; *Gastelum-Quinones* v. *Kennedy,* 374 U. S. 469. He contends that the same rule should apply in the context of naturalization, and that the Government's proof in this case failed to establish "meaningful association." But the petitioner's application was not denied because of his Communist Party membership.[12] It was denied because, under oath, he did not tell the truth. The petitioner was not asked whether he had been "meaningfully associated" with the Communist Party. Nor was the inquiry limited to party membership. He was posed the much broader question whether he had ever "been a member of, or in any way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person." The District Court could rightly have found that the petitioner had not told the truth when he answered this question in the negative if he had not been an actual member, or his membership had been only nominal.

Even assuming that an alien may be denied citizenship on the statutory ground of Party membership only when "meaningful association" is shown, the broader question asked of the petitioner was certainly material and relevant. The Government is entitled to know of any facts that may bear on an applicant's statutory

[12] The District Court specifically refused to accept the Government's contention that the petitioner was ineligible for naturalization under the statutory provisions barring Communist Party members from citizenship. See note 8, *supra.*

eligibility for citizenship, so that it may pursue leads and make further investigation if doubts are raised. The petitioner has never indicated that he was confused or misled by the scope of the question—that he believed at the time it was asked that the question reached only "meaningful association."

We cannot say that the District Court was wrong in finding that the petitioner had failed to tell the truth. It follows that the Court of Appeals was not in error in declining to upset that finding.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 66.—October Term, 1966.

Kalman J. Berenyi, Petitioner, v. District Director, Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the First Circuit.

[January 23, 1967.]

Mr. Justice Douglas, with whom The Chief Justice and Mr. Justice Brennan concur, dissenting.

In this case we are confronted with the spectacle of a person admittedly loyal to the United States, and concededly opposed to communism being denied naturalization because the District Court found that he was not a "person of good moral character." This finding was in turn based upon a subsidiary finding that petitioner had, in the remote past, been a member of the Hungarian Communist Party, and had therefore lied when he stated that he had never been a member of that Party. The "evidence" upon which the crucial finding of Communist membership was based was slim, ambiguous, and equivocal; and when compared with the overwhelming evidence adduced by petitioner, it is apparent that the finding was *clearly erroneous*.

The Government's case was dependent upon the testimony of two witnesses. Dr. Paul Halasz testified that he had attended medical school in Hungary with petitioner. He did not attend classes with petitioner since he was a number of years behind. The total enrollment of the school was between 1,800 and 2,000. He did not know petitioner socially, but did talk to petitioner and "severel times" petitioner helped Halasz with his studies. Halasz was a member of the Communist Party, he "believed" between 1948 and 1956. He could not say how

often he attended meetings.[1] According to Halasz, he saw petitioner at some Communist Party meetings, but he did not know how often. He "thought" it was more than once. He did not know what transpired at the meetings, nor did he know whether the particular meetings were *open to nonparty members* or were *open to all.* Most of the meetings were *open to nonparty members and nonmembers were encouraged to attend.* If they did not, they took the risk of retribution. *When nonmembers attended the meetings, they were not identified as nonmembers.* Halasz had never seen petitioner display a membership card, although he had been the doorkeeper at several meetings. He admitted that petitioner was not a "Communist in heart," and that if he said something with respect to communism "it wasn't for the favor of the Communists." He *assumed* that petitioner was a party member because he had seen him at some meetings.

The second government witness was Dr. Gyorgy Kury who had been in the same medical class with petitioner for one year. The most that this witness could come up with was that he had attended ar ideological indoctrination session required to be attended by all students, *members and nonmembers alike.* At that session, he heard petitioner state that he was the session leader and that he had joined the party after the Soviet occupation of Hungary in 1945. He did not remember who had attended the meeting or exactly what petitioner had said. That was his only contact with petitioner. Except for this one occasion, Kury had never heard petitioner say that he was or had been a Communist.

This was the only evidence the Government adduced to show that petitioner had been a member of the Com-

[1] Nor could Halasz remember whether he had made a statement to the Naturalization Service inspector under oath.

munist Party. The abundance of evidence produced by petitioner can only be briefly summarized. Petitioner unequivocally testified under oath that he had never been a member of the Communist Party and had never attended a *closed meeting*. He did attend *open meetings* to which he had been invited and at which other non-Communists were present.[2] The invitation was tantamount to an order, and nonattendence would result in serious consequences. Attendance of Berenyi at an *open meeting* is the most that is shown. Plainly that is not sufficient to show that he ever had "been a member of, or in any way connected with, or associated with the Communist Party"—unless as a part of the cold war technique words are to be turned into traps to catch the innocent. And Kury's vague memory that petitioner had joined the Communist Party is belied by every facet of petitioner's character as revealed by a reading of this record.

During the Hungarian uprising in October and November of 1956, petitioner was a member of the Hungarian Army, which he had joined in order to obtain finances to complete his medical education. Communist membership was not a condition for serving in the army. His unit fought the Russians, and petitioner was on duty treating people who were wounded in fighting.

He married a woman whose family's property had been confiscated by the Communist Government; his wife's family left Hungary to escape the Communist regime. His wife testified that she hated communism and the Communist Government of Hungary.

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[2] The difference between the so-called closed meeting and the open meeting is described in the testimony which I have attached as an Appendix to this opinion. From that it appears that even nonparty members were invited at times even to closed meetings.

In 1956, petitioner and his wife fled the Communist regime, making their escape at great personal risk. Petitioner testified without equivocation to his opposition to communism, his loyalty and attachment to the United States and his willingness to fight and bear arms in the defense of this country. He absolutely denied making the statement attributed to him by Kury. After his escape, petitioner resumed his medical career in this country, is associated with a number of hospitals and has been a senior instructor on the staff of the Tufts Medical School.

Petitioner's wife testified that both she and petitioner hated communism and the Hungarian Communist Government, and while in Hungary constantly wanted to leave the country for freedom. Lorand De Bickish, a former Hungarian national who is now a naturalized United States citizen, also testified on petitioner's behalf. De Bickish was an avowed anti-Communist who had been arrested twice and imprisoned once for attempting to escape from the Hungarian Communist Government. He testified that he had been exiled to a small town in Hungary because his brother was a broadcaster for Radio Free Europe. During his exile, petitioner and his wife were the only people to visit him. Petitioner often voiced his opposition to communism and the Hungarian Government. He and petitioner often secretly listened to Radio Free Europe and the Voice of America, and talked of leaving Hungary and escaping to freedom.

Two other witnesses testified that while in Hungary petitioner had often expressed his opposition to communism and the Hungarian Government and his desire to escape to a free country. They testified that, while in the United States, petitioner frequently expressed his gratitude at being here, and his love for the United States and the freedom it offered. It was stipulated that yet another witness would testify that petitioner opposed

communism and was attached to the principles of the Constitution.

Thus we are confronted with the curious proposition that the speculations of one witness, and the hazy memory of another witness as to a statement made in the distant past, can outweigh the overwhelming evidence adduced by petitioner, and thereby prevent his naturalization. To me this is tantamount to saying that the Government can merely throw a very slim doubt into the case, and deny naturalization when the applicant fails to disprove the ephemeral doubt. It is no answer to say that the applicant in a naturalization proceeding bears the burden of showing his eligibility for citizenship. The crucial question is what the applicant must do successfully to bear his burden of persuasion. Nor is it an answer to say that doubts should be resolved in favor of the United States and against the applicant. The question is whether a "doubt" is present to be resolved. Must the applicant tilt with every windmill thrown in his path by the Government? In this case there was no "doubt" to be resolved in the Government's favor. If the Government's sketchy evidence did raise a doubt, the doubt was clearly dispelled by the overwhelming evidence adduced by petitioner. The petitioner did carry his burden of proof and his burden of persuasion. The concurrent findings of two lower courts are not sacrosanct; the "two court finding" rule is no talisman preventing this Court from exercising the duties with which it is charged. This Court can review concurrent findings where there is "a very obvious and exceptional showing of error." *Graver Mfg. Co.* v. *Linde Co.*, 336 U. S. 271, 275. This is such a case.

APPENDIX.

Paul Halasz, the chief witness against petitioner in the District Court, testified as follows:

"Q. Did you ever see a card showing that Dr. Kalman Berenyi was a member of the Communist Party?

"A. No. I never have seen a card.

"Q. Did he ever tell you or admit to you that he was a member of the Communist Party?

"A. No.

"Q. Did he in any way participate in these so-called meetings of any kind?

"A. Yes.

"Q. In what way?

"A. Well, he had to be there.

"Q. Well, other than put his body into a chair and to sit down at that meeting did he do anything else?

"A. I can't recall.

"Q. Now isn't it a fact that there were many non-communists who were called to these meetings?

"A. Yes.

"Q. And would you say out of a class or group of 40 people, how many would be noncommunists?

"A. I don't know. It depends. Well, from 40 people could be 23 or 24, maybe, not Communists.

. . . . .

"Q. But in this group that you referred to where you claim you saw Dr. Kalman Berenyi how many people would be present?

"A. Well, I would say about 120–150 people.

. . . . .

"Q. Do you know for a fact, sir, that Kalman Berenyi knew it to be a Communist Party meeting on the occasions when he did attend it, according to your testimony?

"A. You ask me if he knew that was a Communist Party meeting going on. Well, I don't know if he was told or not.

"Q. Now isn't it a fact that at this so-called meetings indoctrination took place, trying to convert and induce noncommunists to join?

"A. Certainly.

. . . . . .

"Q. Did you ever see a Communist Party book in the possession of Dr. Kalman Berenyi?

"A. No, I did not.

"Q. And did you know from your Party records, if you know of any, that he was listed as a Communist Party member?

"A. I never have seen such a Party record.

"Q. Now, Dr. Halasz, on direct examination you testified that he attended these meetings which you called Communist Party meetings?

"A. Yes.

"Q. Can you tell us with some degree of certainty as to how many meetings you saw Dr. Berenyi at?

"A. No, I can't tell that. Possible I see him maybe two or three times.

"Q. Possibly?

"A. That is all.

"Q. And it could have been once?

"A. It could be more or it could be once?

"Q. You kept no records on it?

"A. No.

"Q. And he was not active in anything? He just sat there?

"A. Oh, he was active, helping the rest of the students to study his medical science.

"Q. But at the so-called meetings once, twice or three times he never said a word, is that right?

"A. No. Unless he was straight asked because it can happen that somebody was asked straight about certain things.

. . . . .

"Q. Do you know now whether Dr. Berenyi attended open or closed meetings?

"A. I can't recall.

"Q. Did you ever have any discussions with Dr. Berenyi concerning his beliefs in Communism or the principles of Communism?

"A. Oh, sometimes certain things came up, certain questions. He didn't say too much; and if he said something, it wasn't for the favor of the Communists.

. . . . .

"Q. And as a result of your talk with Kalman Berenyi, could you tell this Court what his feelings were towards Communism?

"A. I don't believe he was a Communist, even if he was a member of the Communist Party. I don't believe he was Communist in heart. . . .

"Q. Do you assert that he is a member—do you assert that he was a member of the Communist Party?

"A. I thought he was a member of the Communist Party because I have seen him on those certain meetings.

"Q. And that was all you had to base it on?

"A. That is right.

. . . . .

And it appears that even at the so-called "closed party meetings," noncommunists were admitted. For a "closed party meeting" was explained by Halasz to mean "that only the Party members can say anything or vote on any subject."

"The Court. But it was possible that non-communists—when I say 'noncommunists,' they who were not members of the Party were present, but if they were present, they were not allowed to speak and they were not allowed to vote, is that right?

"The Witness. That is right, yes."